

U.S. ARMY SERGEANTS MAJOR ACADEMY (ANCOC)

T428

OCT 03

CONDUCT SEARCH AND SEIZURE

TRAINING SUPPORT PACKAGE



TRAINING SUPPORT PACKAGE (TSP)

TSP Number / Title	T428 / CONDUCT SEARCH AND SEIZURE
Effective Date	01 Oct 2003
Supersedes TSP(s) / Lesson(s)	P403, Search and Seizure, dated OCT 02
TSP Users	600-ANCOC Advanced Noncommissioned Officer Course
Proponent	The proponent for this document is the Sergeants Major Academy.
Improvement Comments	<p>Users are invited to send comments and suggested improvements on DA Form 2028, <i>Recommended Changes to Publications and Blank Forms</i>. Completed forms, or equivalent response, will be mailed or attached to electronic e-mail and transmitted to:</p> <p>COMDT USASMA ATTN ATSS DCA BLDG 11291 BIGGS FIELD FORT BLISS, TX 79918-8002</p> <p>Telephone (Comm) (915) 568-8875 Telephone (DSN) 978-8875 E-mail atss-dcd@bliss.army.mil</p>
Security Clearance / Access	Unclassified
Foreign Disclosure Restrictions	FD5. This product/publication has been reviewed by the product developers in coordination with the foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.

PREFACE

Purpose

This Training Support Package provides the instructor with a standardized lesson plan for presenting instruction for:

Task Number

Task Title

Individual

181-101-4001

Conduct a Search/seizure

This TSP
Contains

TABLE OF CONTENTS

	<u>PAGE</u>
Preface	2
Lesson Section I Administrative Data	4
Section II Introduction	7
Terminal Learning Objective - Conduct search and seizure.	7
Section III Presentation	9
Enabling Learning Objective A - Inform soldiers of their rights.	9
Enabling Learning Objective B - Determine the scope of an authorized search.	11
Enabling Learning Objective C - Conduct searches with probable cause.	15
Enabling Learning Objective D - Conduct searches without probable cause.	17
Enabling Learning Objective E - Conduct inventories.	21
Enabling Learning Objective F - Conduct inspections.	22
Section IV Summary	25
Section V Student Evaluation	27
Appendix A Viewgraph Masters A -	1
Appendix B Test(s) and Test Solution(s) (N/A) B -	1
Appendix C Practical Exercises and Solutions C -	1
Appendix D Student Handouts D -	1

CONDUCT SEARCH AND SEIZURE
T428 / Version 1
01 Oct 2003

SECTION I. ADMINISTRATIVE DATA

All Courses Including This Lesson	<u>Course Number</u>	<u>Version</u>	<u>Course Title</u>
	600-ANCOC	1	Advanced Noncommissioned Officer Course

Task(s) Taught(*) or Supported	<u>Task Number</u>	<u>Task Title</u>
	<u>Individual</u>	
	181-101-4001 (*)	Conduct a Search/seizure

Reinforced Task(s)	<u>Task Number</u>	<u>Task Title</u>
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Academic Hours	The academic hours required to teach this lesson are as follows:	
		<u>Resident Hours/Methods</u>
		1 hr 25 mins / Conference / Discussion
		25 mins / Practical Exercise (Performance)
	Test	0 hrs
	Test Review	0 hrs
	Total Hours:	2 hrs

Test Lesson Number	<u>Hours</u>	<u>Lesson No.</u>
	Testing (to include test review)	E403

Prerequisite Lesson(s)	<u>Lesson Number</u>	<u>Lesson Title</u>
	None	

Clearance Access	Security Level: Unclassified Requirements: There are no clearance or access requirements for the lesson.
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Foreign Disclosure Restrictions	FD5. This product/publication has been reviewed by the product developers in coordination with the USASMA foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.
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References			
<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Additional Information</u>
FM 19-10	MILITARY POLICE LAW AND ORDER OPERATIONS	30 Sep 1987	
FM 27-1	LEGAL GUIDE FOR COMMANDERS	13 Jan 1992	
MCM 2002	Manual For Courts Martial	01 Apr 2002	

Student Study Assignments	Before class-- read					
	<ul style="list-style-type: none"> read student handouts 1 thru 4. 					
	During class--					
	<ul style="list-style-type: none"> Participate in classroom discussion and practical exercises. 					
Instructor Requirements	After Class--					
	<ul style="list-style-type: none"> Turn in recoverable references after the examination for this lesson. 					
	1:16, SFC, ANCOC graduate, ITC and SGITC qualified.					
Additional Support Personnel Requirements	<u>Name</u>	<u>Stu Ratio</u>	<u>Qty</u>	<u>Man Hours</u>		
	None					
Equipment Required for Instruction	<u>ID Name</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Qty</u>	<u>Exp</u>	
	441-06 LCD Projection System	1:16	1:1	N	1	N
	559359 SCREEN PROJECTION	1:16	1:1	N	1	N
	702101T134520 DELL CPU, MONITOR, MOUSE, KEYBOARD	1:16	1:1	N	1	N
	703500T102257 DESKTOP/EPSON PRINTER	1:16	1:1	N	1	N
	SOFTWARE-2 WINDOWS XP, LATEST GOVERNMENT APPROVED VERSION	1:16	1:1	N	1	N
Materials Required	Instructor Materials:					
	<ul style="list-style-type: none"> TSP 					
	Student Materials:					
	<ul style="list-style-type: none"> Issued to students during inprocessing: <ul style="list-style-type: none"> SH-1, Advance Sheet. SH-2, Extract of Manual for Courts-Martial. SH-3, Extract of FM 19-10. SH-4, Extract of FM 27-1. Pen or pencil and writing paper 					
Classroom, Training Area, and Range Requirements	CLASSROOM INSTRUCTION 900 SF, 16 PN or Classroom Conducive to Small Group Instruction of 16 Students.					

**Ammunition
Requirements**

<u>Id</u>	<u>Name</u>	<u>Exp</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt Qty</u>
None					

**Instructional
Guidance**

NOTE: Before presenting this lesson, instructors must thoroughly prepare by studying this lesson and identified reference material.

This TSP requires one small group leader (SGL) who meets the requirements listed in the Course Management Plan. In addition, the SGL will:

- Read and study all TSP material and be ready to conduct the class.
 - Conduct the class in accordance with this TSP.
 - Collect all recoverable materials after the examination for this lesson.
-

**Proponent
Lesson Plan
Approvals**

<u>Name</u>	<u>Rank</u>	<u>Position</u>	<u>Date</u>
Santa Barbara, Robert	GS-09	Training Specialist	
Eichman, Guy A.	MSG	Course Chief, BNCOC/ANCOC	
Lawson, Brian H.	SGM	Chief, NCOES	
Mays, Albert J.	SGM	Chief, CDD	

SECTION II. INTRODUCTION

Method of Instruction: <u>Conference / Discussion</u>
Technique of Delivery: <u>Small Group Instruction (SGI)</u>
Instructor to Student Ratio is: <u>1:16</u>
Time of Instruction: <u>5 mins</u>
Media: <u>None</u>

Motivator

At some time in your career as a platoon sergeant, your commander will call upon you to participate in the conduct of a search and seizure of the barracks. You need to know who can authorize a search and what your responsibilities are, to include protecting soldiers' rights and evidence. Not only will you need to know how to handle material found in probable cause and non-probable cause searches, you will also need to know how to handle material found during inspections and inventories.

Terminal Learning Objective

NOTE: Inform the students of the following Terminal Learning Objective requirements. At the completion of this lesson, you [the student] will:

Action:	Conduct search and seizure.
Conditions:	Given barracks, soldiers, and authority from your commander.
Standards:	Conducted probable and non-probable cause searches and seizures, inventories, and inspections within the commander's guidance IAW FM 27-1, FM 19-10, and MCM.

Safety Requirements

None

Risk Assessment Level

Low

Environmental Considerations

NOTE: It is the responsibility of all soldiers and DA civilians to protect the environment from damage.

None

Evaluation

You will take a written examination. The examination will include questions from this lesson. You must correctly answer 70 percent or more to receive a passing score.

**Instructional
Lead-In**

The Fourth Amendment to the Constitution protects the right of the people to be free from unreasonable searches and seizures. The amendment also provides that no authority will issue a warrant except when there is “probable cause.” Without probable cause, no search is admissible in a court of law unless it is incident to a lawful apprehension conducted with the consent of the person searched.

There is probable cause to search when there are reasonable grounds to believe that you can find items connected with criminal activity located in the place (room and barracks, privately owned vehicle, or quarters) or on the person you want to search. You must know and understand search and seizure procedures to function effectively within the law.

The Fifth Amendment of the Constitution protects the right of people from self-incrimination. As NCOs we must be ever mindful to protect soldiers and evidence when conducting searches and seizures, inspections, inventories, or apprehensions.

SECTION III. PRESENTATION

NOTE: Inform the students of the Enabling Learning Objective requirements.

A. ENABLING LEARNING OBJECTIVE

ACTION:	Inform soldiers of their rights.
CONDITIONS:	Given soldiers, authority from your commander to conduct search and seizure, authority to conduct inspections or inventories, or during apprehension.
STANDARDS:	Informed soldiers of their right to remain silent before questioning them about any material found during an authorized search and seizure, during the conduct of inspections or inventories, or during the soldier's apprehension IAW MCM, FM 27-1, FM 19-10.

1. Learning Step / Activity 1. Soldiers' Rights

Method of Instruction: Conference / Discussion
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 5 mins
Media: None

Soldiers' Rights

As a noncommissioned officer, by virtue of your rank, you have the authority to apprehend soldiers, conduct inspections, and with your commander's authority, conduct searches and seizures and inventories. You also have the authority to seize any material in plain view that you see or smell and that you believe is contraband or evidence of a crime.

As an NCO, subject to military law, you may act as an agent for your commander or for the Army when you are conducting any of the tasks listed in the paragraph above.

While in the performance of conducting a search and seizure, inventory, inspection, or apprehension, you must ensure you protect soldiers' rights. Should you find any material that you determine to be evidence of a crime, do not interrogate, question, or request any vocal or written statement from the soldier until you inform him of his rights.

The Fifth Amendment to the Constitution and Article 31 protect us from self-incrimination. They are applicable only to evidence of a testimonial or communicative

nature, meaning confessions or interrogating and questioning. You must afford this privilege to a suspected soldier.

QUESTION: What three things must you first do before questioning a soldier if you find evidence of a crime on his person or in his property?

ANSWER:

1. Inform the soldier of the nature of the accusation.
2. Advise the soldier of his right to remain silent.
3. Advise the soldier that the commander may use any statement he makes, as evidence against him in a trial by court-martial.

Ref: SH-2-9

The soldier also has the right to counsel when questioned. This normally happens later after the soldier has seen the commander, and the commander refers the soldier to the defense counsel at JAG.

It is imperative that you inform soldiers of their rights before questioning them. Not only does it protect the soldier, it also protects the evidence. If a soldier begins to talk about any material you may have found, or what he was doing when you apprehended him, you must stop him, and inform him of his rights. In a military trial, the judge may throw out any statement a soldier makes if you obtain the statement in violation of the self-incrimination privilege or due process clause of the Fifth Amendment of the Constitution, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.

NOTE: Generate group discussion as to what coercion, unlawful influence, or unlawful inducement means.

During the remainder of this lesson, the group will be discussing the scope of authorized searches, probable cause searches, searches without probable cause, inventories, inspections and apprehensions. All have two things in common: soldiers and evidence. You must protect both. First, the soldier by informing him of his right to remain silent, and second, the evidence so your commander may use it in legal proceedings.

CHECK ON LEARNING:

QUESTION: Which Amendment to the Constitution and which Article protects us from self-incrimination?

ANSWER: The Fifth Amendment, and Article 31.

Ref: SH-2-4

QUESTION: What three things must you inform a soldier of if you want to question him about evidence found on his person or in his property?

ANSWER: 1. Inform the soldier of the nature of the accusation.
2. Advise the soldier of his right to remain silent.
3. Advise the soldier that any statement he makes, the commander may use as evidence against him in a trial by court-martial.

Ref: SH-2-9

B. ENABLING LEARNING OBJECTIVE

ACTION:	Determine the scope of an authorized search.
CONDITIONS:	Given barracks, soldiers, and authority from your commander.
STANDARDS:	Determined the limitations of the search as imposed by the commander's authorization IAW FM 27-1, FM 190-10, and MCM.

1. Learning Step / Activity 1. Scope of Search

Method of Instruction: Conference / Discussion
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: VGT-1 and VGT-2

Scope of Search

Once your commander authorizes a search, you must carefully comply with the limitations imposed by his authorization. You may only search in those places described in the authorization and only in areas where it is likely that you will find the object of the search.

QUESTION: If the authorization is to search the barracks, would you also be able to search the soldiers' automobiles?

ANSWER: No. You must search the areas specified in the authorization.

QUESTION: If the reason for a search is to find a 25-inch television, can you search desk drawers?

ANSWER: No. A 25-inch TV will not fit in a desk drawer. You may not search areas that are unlikely to contain the object of the search.

Ref: SH-3-2

You may lawfully seize soldiers' property in the barracks after a legal search, inspection, or inventory. An unlawful search may violate a soldier's right and result in seized items, no matter how important they may be, to be inadmissible in a court-martial.

An authorization to search for contraband implicitly carries the limited authority to detain soldiers in the barracks rooms while you conduct the search. You may also detain soldiers leaving the barracks upon your arrival to conduct the search.

Authorizing a Search

Your commander may authorize the search of a soldier or place under his command when he believes there is probable cause that items connected with criminal activities are either on a soldier or in the place he wants to search.

QUESTION: Can the commander delegate his authority to authorize a search?

ANSWER: The commander may not delegate his authority to authorize a search to another soldier in the unit.

QUESTION: Is there an instance where the power to authorize a search may go down to the next senior person?

ANSWER: Yes, when the commander is absent or circumstances are such that no one is able to contact him.

Ref: SH-3-3

For your commander to make a decision to conduct a search, he must receive information that can be in the form of statements, either written or oral (that one can transmit by telephone or radio).

Although not necessary, statements are best if they are sworn statements. The commander may require an oath, and in situations where a case may be close (touch and go), the oath may be the factor that determines admissibility in court.

Your commander must make a decision, based on statements, whether or not "probable cause" to search exists. Once he determines there is probable cause, he can give an oral or written authorization to search. His search must specify the place to search and the things to look for and seize.

Determining Probable Cause

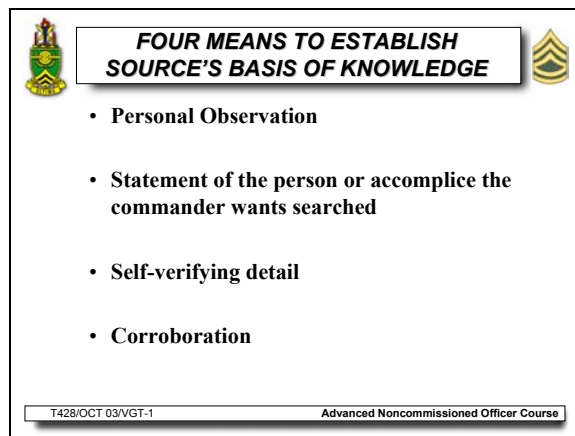
Your commander must make a decision whether probable cause exists. He will evaluate the information provided to him and determine if it is reliable and reasonably warrants his acting on the basis of the information. He must make an overall assessment as to the reasonableness to conduct a search based on two elements. The first is the source's basis of knowledge.

NOTE: Ask the following question and then show VGT-1. Ask the students to elaborate on the meaning of the four items on the slide.

QUESTION: What four means does the commander have to establish a source's knowledge?

ANSWER: See VGT-1.

SHOW VGT-1, FOUR MEANS TO ESTABLISH SOURCE'S BASIS OF KNOWLEDGE



Ref: SH-3-3

REMOVE VGT-1

If the search is for drugs, personal observation must also include facts indicating there is a basis for belief that what the observer saw were drugs. This means the commander has had a class on drug identification, or the third party has had a class on drug identification or has furnished reliable information in the past as to the particular drug in question.

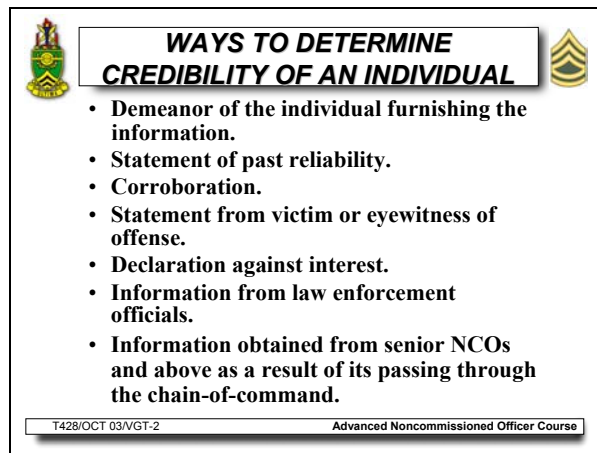
Your commander must also satisfy himself as to the credibility of the person furnishing the information. The commander can use a reliability test to establish the credibility of his source.

NOTE: Ask the following question, then show VGT-2. Ask the students to elaborate on the meaning of the items listed on the slide.

QUESTION: What are some of the ways a commander can determine the credibility of an individual?

ANSWER: See VGT-2.

SHOW VGT-2, WAYS TO DETERMINE CREDIBILITY OF AN INDIVIDUAL



Ref: SH-3-4

When the person who obtained the information personally gives it to your commander, your commander can judge the individual's reliability at that time. Even if the person is not a part of your unit, the commander still has eye-to-eye contact with the source. Your commander can question the source at length to determine the source's credibility.

REMOVE VGT-2

CHECK ON LEARNING:

QUESTION: When does a commander authorize the search of a soldier or a place under his command?

ANSWER: When he has probable cause to believe that items connected with criminal activities are on the person or in a place under the commander's authority.

Ref: SH-3-3

QUESTION: If the commander determines there is probable cause, must he give written authorization to search?

ANSWER: No, the authorization can either be oral or written.

Ref: SH-3-3

QUESTION: What are two things the commander must do to determine if he has probable cause to authorize a search?

ANSWER: Determine the source's basis of knowledge, and the reliability of the source.

Ref: SH-3-4

C. ENABLING LEARNING OBJECTIVE

ACTION:	Conduct searches with probable cause.
CONDITIONS:	Given barracks, soldiers, articles subject to search and seizure, and authority from your commander.
STANDARDS:	Complied with the limitations of the search as imposed by the commander's authorization and seized articles IAW FM 19-10, FM 27-1, and MCM.

1. Learning Step / Activity 1. Practical Exercise

Method of Instruction: Practical Exercise (Performance)
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 10 mins
Media: PE-1 and SPE-1

Practical Exercise

NOTE: Issue PE-1 to students and have them begin the PE. After 5 minutes issue SPE-1 and allow a short discussion.

2. Learning Step / Activity 2. Probable Cause Search, of Government Quarters

Method of Instruction: Conference / Discussion
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 5 mins
Media: None

Probable Cause Search, of Government Quarters

As discussed, the commander may direct a search of any person or property in a place under his control only if he has probable cause. He does not, however, have the authority to conduct a search of one of his soldiers who live in government quarters. Only the post commander may authorize searches or apprehensions in government quarters.

Ref: SH-4-4

Items Subject to Seizure

Items can be subject to seizure when specified in a search conducted under your commander's authorization. You must clearly mark all items seized with your initials and the military date and time. If there is no way to mark the item, then place it in a sealed marked container. The container should be tamper-proof or sealed to show an absence of tampering.

While it may be desirable to seize items in the presence of a suspect, it is not mandatory; however, you must use a DA Form 4137 and maintain the chain of custody. The DA Form 4137 is a record of everyone who handles an item, from its first identification as evidence, until the trial. Everyone who handles the evidence may have to appear at a trial.

During a lawful search, you may seize any evidence relating to crimes other than that specified by the search. The evidence must be in plain sight during the search or in a place where you were looking for the specified evidence of the search.

QUESTION: What does plain view mean in regards to seizing evidence?

ANSWER: You may lawfully in any place, without obtaining a warrant or a commander's authorization, seize any item in plain view or smell that you have probable cause to believe is contraband or evidence of a crime.

QUESTION: If during a search, you detect a seizable item not related to the search, can you seize it?

ANSWER: Yes. Seeing an item in plain view in proximity to an individual may justify an apprehension or further search of the same area or another area.

Ref: SH-3-5

CHECK ON LEARNING: QUESTIONS AND ANSWERS:

QUESTION: If you are conducting an authorized search for a television in the barracks, and you observe cocaine in an open drawer, do you have the authority to seize it, and why?

ANSWER: Yes, because the drawer is already open, and the cocaine is in "plain view."

Ref: SH-3-5

Break TIME: 00:50 to 01:00

D. ENABLING LEARNING OBJECTIVE

ACTION:	Conduct searches without probable cause.
CONDITIONS:	Given situations of a soldier's apprehension, government property, or consent to search.
STANDARDS:	Conducted a lawful search (without probable cause) of an apprehended soldier, government property, and with consent IAW FM 27-1, and MCM.

1. Learning Step / Activity 1. Search Without Probable Cause

Method of Instruction: Conference / Discussion
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 15 mins
Media: VGT-3 thru VGT-5

Search Without Probable Cause

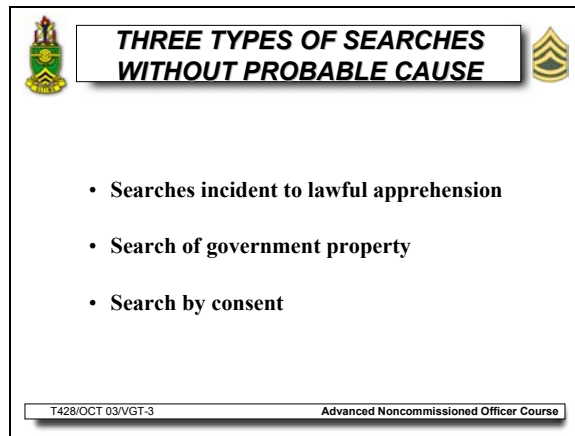
We will now discuss three types of searches where you do not need probable cause to conduct a search.

NOTE: Ask the following question, then show VGT-3 with the bullet comments covered. Uncover the comments as the students respond.

QUESTION: What are the three types of searches listed in FM 27-1 that you may conduct without probable cause?

ANSWER: See VGT-3.

SHOW VGT-3, THREE TYPES OF SEARCHES WITHOUT PROBABLE CAUSE



REF: SH-4-5

REMOVE VGT-3

Searches Incident to Lawful Apprehension

You can legally search a soldier when and where you legally apprehend him. In fact, you can with probable cause, legally apprehend a soldier and conduct a search that does not require probable cause to be lawful. We will discuss this in a few minutes.

QUESTION: Who may apprehend a soldier, and what must that individual have in order to apprehend him?

ANSWER: Any officer, warrant officer, noncommissioned officer, or military policeman with "probable cause."

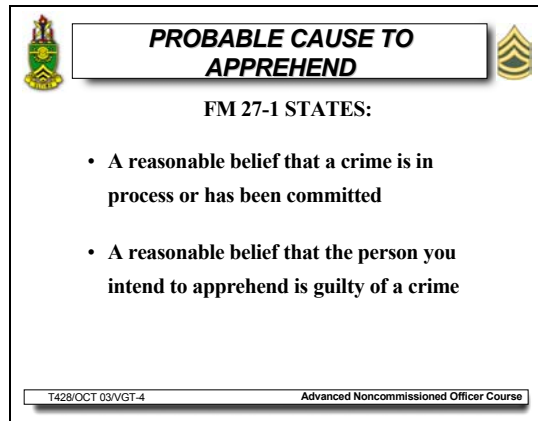
Ref: SH-4-6

NOTE: Ask the following question, then show VGT-4 with the bullet comments covered. Uncover the comments as the students respond.

QUESTION: What two things must you satisfy in order to have probable cause to apprehend a soldier?

ANSWER: See VGT-4.

SHOW VGT-4, PROBABLE CAUSE TO APPREHEND



Ref: SH-4-6

REMOVE VGT-4

NOTE: Call on one of the students to read paragraph 7 on SH-4-6. The paragraph provides an example of probable cause to apprehend.

Once you apprehend a soldier, you may legally search him when and where you legally apprehend him. The intention of the search is to discover weapons and prevent destruction of evidence.

You must limit your search to his person and the area within his immediate control. This may mean his wall locker, if it is within reach, but not necessarily the rest of the room.

Ref: SH-4-5

Searches of Government Property

You do not need probable cause to search government property unless the soldier received the property to use with a reasonable expectation of privacy.

QUESTION: What would be a good example of government property that does not require probable cause to search?

ANSWER: Wall locker, foot locker.

Ref: SH-4-5

Search by Consent

Probable cause is not necessary for a search if the soldier consents to the search.

QUESTION: What does a soldier waive when he consents to a search?

ANSWER: His constitutional right of freedom from unreasonable searches.

Ref: SH-4-5

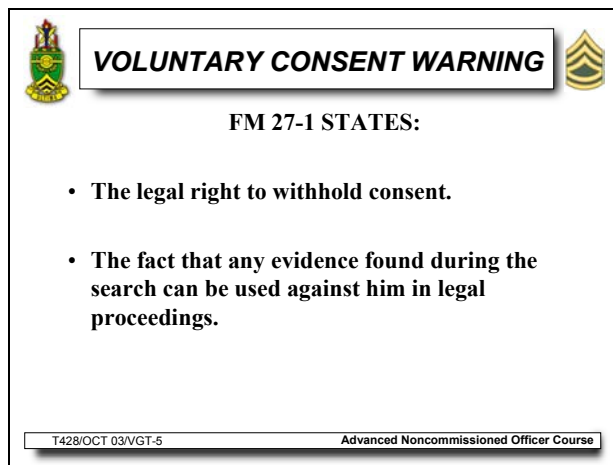
You must be able to produce clear and convincing evidence that the consent was voluntary and not a submission to authority. You can do this by having a witness to the soldier's consent to search.

NOTE: Ask the following question, then show VGT-5 with the bullet comments covered. Uncover them as the students respond.

QUESTION: In order to obtain voluntary consent of the soldier, what two things must you inform him of?

ANSWER: See VGT-5.

SHOW VGT-5, VOLUNTARY CONSENT WARNING



Ref: SH-4-5

REMOVE VGT-5

If a soldier consents to a search, any evidence you find on him or in his area is evidence of criminal conduct. The evidence is admissible at trial.

2. Learning Step / Activity 2. Practical Exercise 2

Method of Instruction: Practical Exercise (Performance)
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 15 mins
Media: PE-2 and SPE-2

NOTE: Issue PE-2 to students and have them begin the PE. After 10 minutes issue SPE-2 and allow a short discussion.

CHECK ON LEARNING:

QUESTION: What are the two requirements according to FM 27-1 that you need to have "probable cause" to apprehend a soldier?

ANSWER: 1. A reasonable belief that a crime is in process or has been committed.
2. A reasonable belief that the person you intend to apprehend is guilty of a crime.

Ref: SH-4-6

QUESTION: What are three searches you can conduct without probable cause?

ANSWER: 1. Searches incident to lawful apprehension.
2. Searches of government property.
3. Searches by consent.

Ref: SH-4-5

E. ENABLING LEARNING OBJECTIVE

ACTION:	Conduct inventories.
CONDITIONS:	Given a situation where a soldier is on leave, emergency leave, confined by military or civilian authorities, or absent without leave,.
STANDARDS:	Conducted an inventory of a soldier's possessions in the barracks IAW FM 27-1 and FM 19-10 and followed the military rule of evidence 313 in the MCM.

1. Learning Step / Activity 1. Conduct Inventories

Method of Instruction: Conference / Discussion
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 5 mins
Media: None

Conduct Inventories

The commander may order an inventory of a soldier's possessions in the barracks if the soldier is on ordinary leave, emergency leave, AWOL, hospitalized, or in the custody of the military or civilian authorities. However, the commander may not use the inventory as a pretext for a search.

QUESTION: While conducting an authorized inventory of a hospitalized soldier's possessions, you find cocaine, or other items that would aid in a criminal prosecution. Will the court accept the items as evidence, and why?

ANSWER: Yes. According to the Manual of Courts Martial, Military Rules of Evidence 313: "Unlawful weapons, contraband, or other evidence of crime discovered in the process of an inventory, the primary purpose of which is administrative in nature, may be seized."

Ref: SH-3-11 and SH-4-7

CHECK ON LEARNING: None

F. ENABLING LEARNING OBJECTIVE

ACTION:	Conduct inspections.
CONDITIONS:	Given a situation to inspect for security, military fitness, order, and discipline.
STANDARDS:	Conducted an inspection IAW FM 27-1 and FM 19-10, and followed the military rule of evidence 313 in the MCM.

1. Learning Step / Activity 1. Conduct Inspections

Method of Instruction: Conference / Discussion
Technique of Delivery: Small Group Instruction (SGI)
Instructor to Student Ratio: 1:16
Time of Instruction: 10 mins
Media: VGT-6

Conduct Inspections

Search and seizure requirements do not limit your commander's authority to conduct inspections. It is the commander's inherent right to inspect the barracks in which his soldiers live to ensure his command has its proper equipment, the equipment functions properly, and the command maintains standards of readiness, sanitation, and cleanliness. He may also ensure that his soldiers are present, fit, and ready for duty.

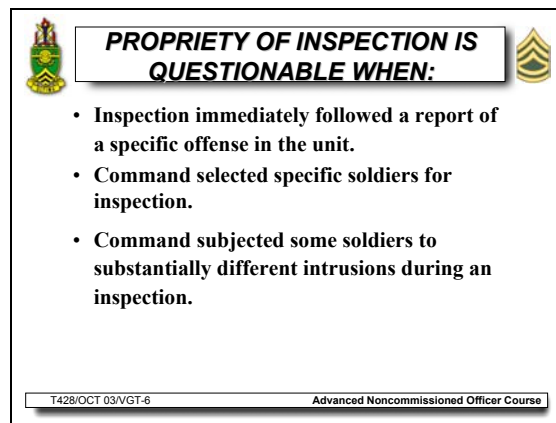
The commander can order a urinalysis as part of a valid inspection. The inspection can also include an examination to locate and confiscate unlawful weapons or contraband as long as the inspection is not a pretext for a search.

Under no circumstances may a commander use an inspection or inventory as a deceptive strategy for a search. If he is looking for evidence of a specific crime, or suspects that a soldier or group of soldiers have drugs in their possession, and he doesn't have "probable cause"; he may not use the inspection or inventory to try and obtain evidence for use in a trial or other disciplinary proceeding.

SH-4 and VGT-6 provide three reasons why an inspection for weapons or contraband may not be proper if your commander allows certain things to occur.

NOTE: Show VGT-6 and call on students to read each bullet comment, provide their thoughts on each, and provide any experiences they may have had concerning the propriety of an inspection.

SHOW VGT-6, PROPRIETY OF INSPECTION



PROPRIETY OF INSPECTION IS QUESTIONABLE WHEN:

- Inspection immediately followed a report of a specific offense in the unit.
- Command selected specific soldiers for inspection.
- Command subjected some soldiers to substantially different intrusions during an inspection.

T428/OCT 03/VGT-6 Advanced Noncommissioned Officer Course

Ref: SH-4-7

REMOVE VGT-6

You may seize and admit as evidence in a court-martial or disciplinary proceeding items that you find during a legitimate inspection.

An inspection is proper only if the government presents clear and convincing evidence that the primary purpose of the inspection was to ensure security, military fitness, or order, and discipline--not to secure evidence for a trial or disciplinary proceedings.

CHECK ON LEARNING:

QUESTION: Does a commander need probable cause to conduct an inspection of his barracks, and why?

ANSWER: No. He has the inherent right to inspect the barracks in which his soldiers live to ensure his command has the proper equipment, is functioning properly, and maintaining standards of readiness, sanitation, and cleanliness, and that his soldiers are present, fit, and ready for duty.

Ref: SH-3-11

QUESTION: May a commander order a urinalysis as part of a valid inspection?

ANSWER: Yes

Ref: SH-4-7

QUESTION: May the commander use the inspection as a pretext for a search if he feels he may catch certain soldiers with drugs, weapons, or contraband, and why?

ANSWER: No. He may authorize an inspection to include an examination to locate and confiscate unlawful weapons or contraband as long as the inspection is NOT a pretext for a search. The primary purpose of an inspection cannot be to obtain evidence for use in a trial or other disciplinary proceeding.

Ref: SH-4-7

SECTION IV. SUMMARY

Method of Instruction: <u>Conference / Discussion</u>
Technique of Delivery: <u>Small Group Instruction (SGI)</u>
Instructor to Student Ratio is: <u>1:16</u>
Time of Instruction: <u>5 mins</u>
Media: <u>None</u>

Check on Learning

QUESTION: What three things must you inform a soldier of if you want to question him about evidence found on his person or in his property?

Answer: 1. Inform the soldier of the nature of the accusation.
2. Advise the soldier of his right to remain silent.
3. Advise the soldier that the commander may use any statement he makes, as evidence against him in a trial by court-martial.

Ref: SH-2-9

QUESTION: When does a commander authorize the search of a soldier or a place under his command?

Answer: When he has probable cause to believe that items connected with criminal activities are on the person or in a place under the commander's authority.

Ref: SH-3-3

QUESTION: If the commander determines there is probable cause, must he give a written authorization to search?

Answer: No, the authorization can either be oral or written.

Ref: SH-3-3

QUESTION: What are two things a commander must do to determine if he has probable cause to authorize a search?

Answer: Determine the source's basis of knowledge, and the reliability of the source.

Ref: SH-3-3 and SH-3-4

QUESTION: If you are conducting an authorized search for a television in the barracks, and you observe cocaine in an opened drawer, do you have the authority to seize it, and why?

Answer: Yes, because the drawer was already open, and the cocaine was in "plain view."

Ref: SH-3-5

QUESTION: What are the two requirements you need to have “probable cause” to apprehend a soldier?

Answer: 1. A reasonable belief that a crime is in process or is being committed.
2. A reasonable belief that the person you intend to apprehend is guilty of a crime.

Ref: SH-4-6

**Review /
Summarize
Lesson**

Since the laws concerning searches and seizures, rules of evidence, and probable cause are often difficult; your commander should consult a judge advocate before authorizing a search. Doing so will not only prevent the unit from performing unlawful searches; it will protect soldiers’ rights and also ensure that evidence found will be admissible in a court-martial.

SECTION V. STUDENT EVALUATION

**Testing
Requirements**

NOTE: Describe how the student must demonstrate accomplishment of the TLO. Refer student to the Student Evaluation Plan.

You will take a written examination. The examination will include questions from this lesson. You must correctly answer 70 percent or more to receive a passing score.

**Feedback
Requirements**

NOTE: Feedback is essential to effective learning. Schedule and provide feedback on the evaluation and any information to help answer students' questions about the test. Provide remedial training as needed.

None

Enabling Learning Objective B

Learning Step 1

VGT-1, Four Means to Establish Source's Basis of Knowledge



FOUR MEANS TO ESTABLISH SOURCE'S BASIS OF KNOWLEDGE



- **Personal Observation**
- **Statement of the person or accomplice the commander wants searched**
- **Self-verifying detail**
- **Corroboration**



WAYS TO DETERMINE CREDIBILITY OF AN INDIVIDUAL



- **Demeanor of the individual furnishing the information.**
- **Statement of past reliability.**
- **Corroboration.**
- **Statement from victim or eyewitness of offense.**
- **Declaration against interest.**
- **Information from law enforcement officials.**
- **Information obtained from senior NCOs and above as a result of its passing through the chain-of-command.**



THREE TYPES OF SEARCHES WITHOUT PROBABLE CAUSE



- **Searches incident to lawful apprehension**
- **Search of government property**
- **Search by consent**



PROBABLE CAUSE TO APPREHEND



FM 27-1 STATES:

- **A reasonable belief that a crime is in process or has been committed**
- **A reasonable belief that the person you intend to apprehend is guilty of a crime**



VOLUNTARY CONSENT WARNING



FM 27-1 STATES:

- **The legal right to withhold consent.**
- **The fact that any evidence found during the search can be used against him in legal proceedings.**



PROPRIETY OF INSPECTION IS QUESTIONABLE WHEN:



- **Inspection immediately followed a report of a specific offense in the unit.**
- **Command selected specific soldiers for inspection.**
- **Command subjected some soldiers to substantially different intrusions during an inspection.**

Appendix B Test(s) and Test Solution(s) (N/A)

PRACTICAL EXERCISE SHEET PE-1

Title	Probable Cause to Search		
Lesson Number/Title	T428 version 1 / CONDUCT SEARCH AND SEIZURE		
Introduction	<p>You may some day be a participant in a search and seizure of one of your soldiers. You may also be in the position to advise the commander whether he should authorize a search.</p>		
Motivator	<p>This practical exercise is going to test you on whether to advise your commander for or against a probable cause search.</p>		
Learning Step/Activity	<p>NOTE: The instructor should inform the students of the following Learning Step/Activity requirements. (ELO C.1)</p> <p>At the completion of this lesson, you [the student] will:</p> <table><tr><td>Action:</td><td>Complete Practical Exercise 1.</td></tr></table>	Action:	Complete Practical Exercise 1.
Action:	Complete Practical Exercise 1.		
Safety Requirements	None		
Risk Assessment Level	Low		
Environmental Considerations	None		
Evaluation	<p>This is a non-graded PE. Your classmates will correct your PE based on a solution sheet. The results of the PE will have no bearing on your academic standings. However, you will need the skills you learn in this PE when you perform your duties as a platoon sergeant back at your unit.</p>		
Instructional Lead-In	<p>You are a platoon sergeant, and the company commander calls you into his office and informs you that he is considering authorizing a search and seizure of one of your soldiers in the barracks. He has information and is asking your advice as to whether you believe there is probable cause to conduct a search.</p>		

**Resource
Requirements****Instructor Materials:**

Practical Exercise Examples 1 and 2.

Solution to Practical Exercise Examples 1 and 2.

Student Materials:

Practical Exercise Examples 1 and 2.

**Special
Instructions**

None

Procedures

Divide the group room into four groups.

Handout situations 1 and 2, page C-3. Each group has five minutes to read the examples and determine if the searches would be lawful or unlawful, and why. Have each group brief why they believe the search is lawful or unlawful.

Present the solutions (C-4) to the situations once all the groups finish their briefings.

SITUATIONS

Determine if the two situations below would give you enough information to recommend to your commander whether there is probable cause to conduct a search?

Situation 1. A reliable person informs your commander that he saw a soldier that lives in the commander's barracks earlier in the evening with cocaine. The commander states he trusts the informant because of his past association with him. He also knows the information is accurate because the informant personally saw the cocaine in the soldier's room.

What would you recommend to your commander, and why?

Situation 2. A person whose reliability is unknown to your commander, informs him that one of the soldiers in the barracks is a suspected drug dealer. He tells the commander that the suspect told him that he is going to town to make a "buy." The suspect said he would return by bus around 1900 and would have the cocaine in a brown brief case. The suspect indicated he would take a taxi from the bus station and return to the barracks and his room, room 222. At this time, he would have cocaine to sell.

The commander states that he called the CID and told them of the facts as described by the source. The CID put the bus terminal under surveillance. At 1900 hrs, the suspect got off the bus with a brown briefcase, took a cab to the barracks, and went to room 222.

What would you recommend to your commander, and why?

Feedback Requirements

At the end of the 5 minute exercise, each group will brief their answers. I will provide you with the correct responses once all groups have briefed. The groups will discuss any differences of opinion they may have for five minutes.

**SOLUTION FOR
PRACTICAL EXERCISE PE-1**

Situation 1: Advise the commander to search. The search would be lawful because the commander knew the informant and knew the informant to be reliable.

Situation 2: Advise the commander to search. The search would be lawful even though the commander had no prior knowledge of the informant's reliability. So much of the information the informant supplied proved to be correct that he has good reason to believe that the rest of the information is also reliable. Therefore you have good reason to suggest he authorize the search.

PRACTICAL EXERCISE SHEET PE-2

Title	No Probable Cause to Search		
Lesson Number/Title	T428 version 1 / CONDUCT SEARCH AND SEIZURE		
Introduction	<p>You may some day be a participant in a search and seizure of one of your soldiers. You may also be in the position to advise the commander whether he should authorize a search.</p>		
Motivator	<p>This practical exercise is going to test you on whether to advise for or against a search.</p>		
Learning Step/Activity	<p>NOTE: The instructor should inform the students of the following Learning Step/Activity requirements. (ELO C.1)</p> <p>At the completion of this lesson, you [the student] will:</p> <table border="1"><tr><td>Action:</td><td>Complete Practical Exercise 2.</td></tr></table>	Action:	Complete Practical Exercise 2.
Action:	Complete Practical Exercise 2.		
Safety Requirements	None		
Risk Assessment Level	Low		
Environmental Considerations	None		
Evaluation	<p>This is a non-graded PE. Your classmates will correct your PE based on a solution sheet. The results of the PE will have no bearing on your academic standings. However, you will need the skills you learn in this PE when you perform your duties as a platoon sergeant back at your unit.</p>		
Instructional Lead-In	<p>You are a platoon sergeant, and the company commander calls you into his office and informs you that he is considering authorizing a search and seizure of one of your soldiers in the barracks. He has information and is asking your advice as to whether you believe he should authorize the search and if it would be lawful.</p>		
Resource Requirements	<p>Instructor Materials:</p> <p>Practical Exercise Examples 1, 2, and 3.</p> <p>Solution to Practical Exercise Examples 1, 2, and 3.</p>		

	<hr/> <p>Student Materials:</p> <p>Practical Exercise Examples 1, 2, and 3.</p> <hr/>
Special Instructions	<hr/> <p>None</p> <hr/>
Procedures	<hr/> <p>Divide the group room into four groups.</p> <p>Handout situations 1, 2, and 3, page C-7. Each group has five minutes to read the examples and determine if the searches would be lawful, and why. Have each group brief why they believe the search is lawful or unlawful.</p> <p>Present the solutions (C-8) to the situations once all the groups finish their briefings.</p> <hr/>

SITUATIONS

Determine if the three examples below would give you enough information to recommend to your commander whether a search of your soldier or his property would be lawful or unlawful.

Situation 1. A military policeman called your commander and said that he apprehended your soldier with marijuana on his person. The MP asked the commander for permission to search your soldier's living area in the barracks.

What would you recommend to your commander, and why?

Situation 2. A reliable person informed your commander that three weeks ago he saw marijuana in one of his soldier's footlocker in the barracks. Your commander ask you if you think he should authorize a search?

What would you recommend to your commander, and why?

Situation 3. PVT Jones reports that one of his suits and \$500 were stolen. Three days later, PVT Williams, PVT Jones' roommate, bought a \$350 stereo from the post exchange. PVT Jones is suspicious of his roommate and informed the commander.

What would you recommend to your commander, and why?

Feedback Requirements

At the end of the 5 minute exercise, each group will brief their answers. I will provide you with the correct responses once all groups have briefed. The groups will discuss any differences of opinion they may have for five minutes.

**SOLUTION FOR
PRACTICAL EXERCISE PE-2**

Situation 1. Advise the commander not to search, it would be unlawful. You have no evidence from which to reasonably conclude that your soldier has marijuana in his wall locker because it is some distance from his place of apprehension. You need more than mere suspicion.

Situation 2. Advise the commander not to search, it would be unlawful. Since the reported possession is far removed in time, you have no valid reason to believe that your soldier still has any marijuana.

Situation 3. Advise the commander not to search, it would be unlawful. Suspicion alone does not constitute probable cause. You must investigate until you have more information, such as a report that another soldier saw PVT Jones' suit in PVT Williams' locker.

HANDOUTS FOR LESSON: T428 version 1

**This Appendix
Contains**

This Appendix contains the items listed in this table---

Title/Synopsis	Pages
SH-1, Advance Sheet	SH-1-1 thru SH-1-2
SH-2, Extract from MCM	SH-2-1 thru SH-2-18
SH-3, Extract from FM 19-10	SH-3-1 thru SH-3-16
SH-4, Extract from FM 27-1	SH-4-1 thru SH-4-8

Student Handout 1

This student handout contains the Advance Sheet.

STUDENT HANDOUT 1

Advance Sheet

Lesson Hours

This lesson consists of two hours of small group instruction.

Overview

During this lesson you will learn how to support your commander by participating in search and seizures.

Learning Objective

Terminal Learning Objective (TLO)

Action:	Conduct search and seizure.
Conditions:	Given barracks, soldiers, and authority from your commander.
Standard:	Conducts probable and non-probable cause searches and seizures, inventories, and inspections within the commander's guidance and IAW FM 27-1, FM 19-10, and MCM.

ELO A Inform soldiers of their rights.
ELO B Determine the scope of an authorized search.
ELO C Conduct searches with probable cause.
ELO D Conduct searches with out probable cause.
ELO E Conduct inventories.
ELO F Conduct inspections.

Assignment

The student assignments for this lesson are:

- Read SH-2
 - Read SH-3
 - Read SH-4
-

Additional Subject Area Resources

None

Bring to Class

You must bring the following materials to class:

- All reference material received
 - Pencil or pen and writing paper
-

Student Handout 2

This student handout contains an extract from Manual for Courts-Martial.

STUDENT HANDOUT 2

MANUAL

FOR

COURTS-MARTIAL

UNITED STATES

(2002 EDITION)

The 2000 Edition of the MCM is a complete revision of the 1984 MCM incorporating all Executive Orders (EO) through 6 Oct 1999 (EO 12473 promulgating the 1984 MCM; EO 12484, 15 Nov 84; EO 12550, 19 Feb 86; EO 12586, 3 Mar 87; EO 12708, 23 Mar 90; EO 12767, 27 Jun 91; EO 12888, 23 Dec 93; EO 12936, 10 Nov 94; EO 12960, 12 May 95; EO 13086, 27 May 98; EO 13140, 6 Oct 99). Copies of each Executive Order can be found in Appendix 25.

PART III MILITARY RULES OF EVIDENCE

SECTION I GENERAL PROVISIONS

Rule 101. Scope

(a) *Applicability* . These rules are applicable in courts-martial, including summary courts-martial, to the extent and with the exceptions stated in Mil. R.Evid. 1101.

(b) *Secondary Sources*. If not otherwise prescribed in this Manual or these rules, and insofar as practicable and not inconsistent with or contrary to the code or this Manual, courts-martial shall apply:

(1) First, the rules of evidence generally recognized in the trial of criminal cases in the United States district courts; and

(2) Second , when not in consistent with sub - division(b)(1), the rules of evidence at common law.

(c) *Rule of construction*. Except as otherwise provided in these rules, the term “military judge” include the president of a special court - martial without a military judge and a summary court-martial officer.

Rule 102. Purpose and construction

These rules shall be construed to secure fairness in administration action , elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Ruling on evidence

(a) *Effect of erroneous ruling*. Error may not be predicated upon a ruling which admits or excludes evidence unless the ruling materially prejudices a substantial right of a party, and

(1) *Objection*. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof*. In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked.

The standard provided in this subdivision does not apply to errors involving requirements imposed by the Constitution of the United States as applied to members of the armed forces except insofar as the error arises under these rules and this subdivision provides a standard that is more advantageous to the accused than the constitutional standard.

(b) *Record of offer and ruling*. The military judge may add any other or further statement which shows the character of the evidence, the form in which it was offered , the objection made , and the ruling there on. The military judge may direct the making of an offer in question and answer form.

(c) *Hearing of members*. In a court-martial composed of a military judge and members, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the members by any means, such as making statements or offers of proof or asking questions in the hearing of the members.

(d) *Plain error*. Nothing in this rule precludes taking notice of plain errors that materially prejudice substantial rights although they were not brought to the attention of the military judge.

Rule 104. Preliminary questions

(a) *Questions of admissibility generally*.

Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, the admissibility of evidence, an application for a continuance, or the availability of a witness shall be determined by the military judge. In making these determinations the military judge is not bound by the rules of evidence except those with respect to privileges.

(b) *Relevancy conditioned on fact*.. W h e n t h e relevancy of evidence depends upon the fulfillment of a condition of fact, the military judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge, except where these rules or this Manual provide expressly to the contrary.

(c) *Hearing of members.* Except in cases tried before a special court - martial without a military judge, hearings on the admissibility of statements of an accused under Mil. R. Evid. 301–306 shall in all cases be conducted out of the hearing of the members. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if the accused so requests.

(d) *Testimony by accused.* The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) *Weight and credibility.* This rule does not limit the right of a party to introduce before the members evidence relevant to weight or credibility.

Rule 105. Limited admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the military judge, upon request, shall restrict the evidence to its proper scope and instruct the members accordingly.

Rule 106. Remainder of or related writings or recorded statements

When a writing or recorded statement is introduced by a party, an adverse party may require that party at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

SECTION II

JUDICIAL NOTICE

Rule 201. Judicial notice of adjudicative facts

(a) *Scope of rule.* This rule governs only judicial notice of adjudicative facts.

(b) *Kinds of facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known universally, locally, or in the area pertinent to the event or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When discretionary.* The military judge may

take judicial notice, whether requested or not.

The parties shall be informed in open court when, without being requested, the military judge takes judicial notice of an adjudicative fact essential to establishing an element of the case.

(d) *When mandatory.* The military judge shall take judicial notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) *Time of taking notice.* Judicial notice may be taken at any stage of the proceeding.

(g) *Instructing members.* The military judge shall instruct the members that they may, but are not required to, accept as conclusive any matter judicially noticed.

Rule 201A. Judicial notice of law

(a) *Domestic law.* The military judge may take judicial notice of domestic law. Insofar as a domestic law is a fact that is of consequence to the determination of the action, the procedural requirements of Mil. R. Evid. 201—except Mil. R. Evid. 201(g)—apply.

(b) *Foreign law.* A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The military judge, in determining foreign law, may consider any relevant material or source including testimony whether or not submitted by a party or admissible under these rules. Such a determination shall be treated as a ruling on a question of law.

SECTION III

EXCLUSIONARY RULES AND RELATED MATTERS CONCERNING SELF-INCRIMINATION, SEARCH AND SEIZURE, AND EYEWITNESS IDENTIFICATION

Rule 301. Privilege concerning compulsory self-incrimination

(a) *General rule.* The privileges against self-incrimination provided by the Fifth Amendment to the Constitution of the United States and Article 31 are

applicable only to evidence of a testimonial or communicative nature. The privilege most beneficial to the individual asserting the privilege shall be applied.

(b) *Standing.*

(1) *In general.* The privilege of a witness to re-fuse to respond to a question the answer to which may tend to incriminate the witness is a personal one that the witness may exercise or waive at the discretion of the witness.

(2) *Judicial advice.* If a witness who is apparently uninformed of the privileges under this rule appears likely to incriminate himself or herself, the military judge should advise the witness of the right to decline to make any answer that might tend to incriminate the witness and that any self-incriminating answer the witness might make can later be used as evidence against the witness. Counsel for any party or for the witness may request the military judge to so advise a witness provided that such a request is made out of the hearing of the witness and, except in a special court-martial without a military judge, the members. Failure to so advise a witness does not make the testimony of the witness inadmissible.

(c) *Exercise of the privilege.* If a witness states that the answer to a question may tend to incriminate him or her, the witness may not be required to answer unless facts and circumstances are such that no answer the witness might make to the question could have the effect of tending to incriminate the witness or that the witness has, with respect to the question, waived the privilege against self-incrimination. A witness may not assert the privilege if the witness is not subject to criminal penalty as a result of an answer by reason of immunity, running of the statute of limitations, or similar reason.

(1) *Immunity generally.* The minimum grant of immunity adequate to overcome the privilege is that which under either R.C.M. 704 or other proper authority provides that neither the testimony of the witness nor any evidence obtained from that testimony may be used against the witness at any subsequent trial other than in a prosecution for perjury, false swearing, the making of a false official statement, or failure to comply with an order to testify after the military judge has ruled that the privilege may not be asserted by reason of immunity.

(2) *Notification of immunity or leniency.* When a prosecution witness before a court-martial has been

granted immunity or leniency in exchange for testimony, the grant shall be reduced to writing and shall be served on the accused prior to arraignment or within a reasonable time before the witness testifies.

If notification is not made as required by this rule, the military judge may grant a continuance until notification is made, prohibit or strike the testimony of the witness, or enter such other order as may be required.

(d) *Waiver by a witness.* A witness who answers a question without having asserted the privilege against self-incrimination and thereby admits a self-incriminating fact may be required to disclose all information relevant to that fact except when there is a real danger of further self-incrimination. This limited waiver of the privilege applies only at the trial in which the answer is given, does not extend to a rehearing or new or other trial, and is subject to Mil.R. Evid. 608(b).

(e) *Waiver by the accused.* When an accused testifies voluntarily as a witness, the accused thereby waives the privilege against self-incrimination with respect to the matters concerning which he or she so testifies. If the accused is on trial for two or more offenses and on direct examination testifies concerning the issue of guilt or innocence as to only one or some of the offenses, the accused may not be cross-examined as to guilt or innocence with respect to the other offenses unless the cross-examination is relevant to an offense concerning which the accused has testified. This waiver is subject to Mil. R. Evid. 608(b).

(f) *Effect of claiming the privilege.*

(1) *Generally.* The fact that a witness has asserted the privilege against self-incrimination in refusing to answer a question cannot be considered as raising any inference unfavorable to either the accused or the government.

(2) *On cross-examination.* If a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are purely collateral.

(3) *Pretrial.* The fact that the accused during official questioning and in exercise of rights under the Fifth Amendment to the Constitution of the United States or Article 31, remained silent, refused to answer a certain question, requested counsel, or re-

quested that the questioning be terminate disinadmissible against the accused.

(g) *Instructions.* When the accused does not testify at trial, defense counsel may request that the members of the court be instructed to disregard that fact and not to draw any adverse inference from it. Defense counsel may request that the members not be so instructed. Defense counsel's election shall be binding upon the military judge except that the military judge may give the instruction when the instruction is necessary in the interests of justice.

Rule 302. Privilege concerning mental examination of an accused

(a) *General rule.* The accused has a privilege to prevent any statement made by the accused at a mental examination ordered under R.C.M. 706 and any derivative evidence obtained through use of such a statement from being received into evidence against the accused on the issue of guilt or innocence or during sentencing proceedings. This privilege may be claimed by the accused notwithstanding the fact that the accused may have been warned of the rights provided by Mil. R. Evid. 305 at the examination.

(b) *Exceptions.*

(1) There is no privilege under this rule when the accused first introduces into evidence such statements or derivative evidence.

(2) An expert witness for the prosecution may testify as to the reasons for the expert's conclusions and the reasons there for as to the mental state of the accused if expert testimony offered by the defense as to the mental condition of the accused has been received in evidence, but such testimony may not extend to statements of the accused except as provided in (1).

(c) *Release of evidence.* If the defense offers expert testimony concerning the mental condition of the accused, the military judge, upon motion, shall order the release to the prosecution of the full contents, other than any statements made by the accused, of any report prepared pursuant to R.C.M. 706. If the defense offers statements made by the accused at such examination, the military judge may upon motion order the disclosure of such statements made by the accused and contained in the report as may be necessary in the interests of justice.

(d) *Noncompliance by the accused.* The military judge may prohibit an accused who refuses to cooperate in mental examination authorize under

R.C.M. 706 from presenting any expert medical testimony as to any issue that would have been the subject of the mental examination.

(e) *Procedure.* The privilege in this rule may be claimed by the accused only under the procedure set forth in Mil. R. Evid. 304 for an objection or a motion to suppress.

Rule 303. Degrading questions

No person may be compelled to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade that person.

Rule 304. Confessions and admissions

(a) *General rule.* Except as provided in subsection (b), an involuntary statement or any derivative evidence there from may not be received in evidence against an accused who made the statement if the accused makes a timely motion to suppress or an objection to the evidence under this rule.

(b) *Exceptions.*

(1) Where the statement is involuntary only in terms of noncompliance with the requirements of Mil. R. Evid. 305(c) or 305(f), or the requirements concerning counsel under M i l . R . E v i d . 3 0 5 (d) , 305(e), and 305(g), this rule does not prohibit use of the statement to impeach by contradiction the in-court testimony of the accused or the use of such statement in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

(2) Evidence that was obtained as a result of an involuntary statement may be used when the evidence would have been obtained even if the involuntary statement had not been made.

(3) *Derivative evidence.* Evidence that challenge under this rule as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the statement was made voluntarily, that the evidence was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

(c) *Definitions.* As used in these rules:

(1) *Confession.* A "confession" is an acknowledg-

ment of guilt.

(2) *Admission*. An “admission” is a self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended by its maker to be exculpatory.

(3) *Involuntary*. A statement is “involuntary” if it is obtained in violation of these self-incrimination privilege or due process clause of the Fifth Amendment to the Constitution of the United States, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.

(d) *Procedure*.

(1) *Disclosure*. Prior to arraignment, the prosecution shall disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces.

(2) *Motions and objections*.

(A) Motions to suppress or objections under this rule or Mil. R. Evid. 302 or 305 to statements that have been disclosed shall be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the objection.

(B) If the prosecution intends to offer against the accused a statement made by the accused that was not disclosed prior to arraignment, the prosecution shall provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interests of justice.

(C) If evidence is disclosed as derivative evidence under this subdivision prior to arraignment, any motion to suppress or objection under this rule or Mil. R. Evid. 302 or 305 shall be made in accordance with the procedure for challenging a statement under (A). If such evidence has not been so disclosed prior to arraignment, the requirements of (B) apply.

(3) *Specificity*. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the

interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

(4) *Rulings*. A motion to suppress or an objection to evidence made prior to plea shall be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at

trial, but no such determination shall be deferred if a party’s right to appeal the ruling is affected adversely. Where factual issues are involved in ruling upon

such motion or objection, the military judge shall state essential findings of fact on the record.

(5) *Effect of guilty plea*. Except as otherwise expressly provided in R. C. M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this rule with respect to that offense regardless of whether raised prior to plea.

(e) *Burden of proof*. When an appropriate motion or objection has been made by the defense under this rule, the prosecution has the burden of establishing the admissibility of the evidence. When a specific motion or objection has been required under subdivision (d)(3), the burden on the prosecution extends

only to the grounds upon which the defense moved to suppress or object to the evidence.

(1) *In general*. The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence. When trial is by a special court-martial without a military judge, a determination by the president of the court that a statement was made voluntarily is subject to objection by any member of the court. When such objection is made, it shall be resolved pursuant to R.C.M. 801(e)(3)(C).

(2) *Weight of the evidence*. If a statement is admitted into evidence, the military judge shall permit the defense to present relevant evidence with respect to the voluntariness of the statement and shall instruct the members to give such weight to the statement as it deserves under all the circumstances. When trial is by military judge without members, the military judge shall determine the appropriate weight to give the statement.

(3) *Derivative evidence*. Evidence that is challenged under this rule as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the statement was made voluntarily, that the evidence

was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

(f) *Defense evidence.* The defense may present evidence relevant to the admissibility of evidence as to which there has been an objection or motion to suppress under this rule. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily. Prior to the introduction of such testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(g) *Corroboration.* An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth. Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of some but not all of the essential facts admitted, then the confession or admission may be considered as evidence against the accused only with respect to those essential facts stated in the confession or admission that are corroborated by the independent evidence. Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(1) *Quantum of evidence needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(2) *Procedure.* The military judge alone shall determine when adequate evidence of corroboration has been received. Corroborating evidence usually is to be introduced before the admission or confession is introduced but the military judge may admit evidence subject to later corroboration.

(h) *Miscellaneous.*

(1) *Oral statements.* A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing is not accounted for.

(2) *Completeness.* If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

(3) *Certain admissions by silence.* A person's failure to deny an accusation of wrongdoing concerning an offense for which at the time of the alleged failure the person was under official investigation or was in confinement, arrest, or custody does not support an inference of an admission of the truth of the accusation.

(4) *Refusal to obey order to submit body substance.*

If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

(A) A charge of violating an order to submit such a sample; or

(B) Any other charge on which the results of the chemical analysis would have been admissible.

Rule 305. Warnings about rights

(a) *General rule.* A statement obtained in violation of this rule is involuntary and shall be treated under Mil. R. Evid. 304.

(b) *Definitions.* As used in this rule:

(1) *Person subject to the code.* A "person subject to the code" includes a person acting as a knowing agent of a military unit or of a person subject to the code.

(2) *Interrogation.* "Interrogation" include any formal or informal questioning in which an incrimi-

nating response either is sought or is a reasonable consequence of such questioning.
(c) *Warnings concerning the accusation, right to remain silent, and use of statements.* A person subject to the code who is required to give warnings under Article 31 may not interrogate or request any statement from an accused or a person suspected of an offense without first:

- (1) informing the accused or suspect of the nature of the accusation;
- (2) advising the accused or suspect that the accused or suspect has the right to remain silent; and
- (3) advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.

(d) *Counsel rights and warnings.*

(1) *General rule.* When evidence of a testimonial or communicative nature within the meaning of the Fifth Amendment to the Constitution of the United States either is sought or is a reasonable consequence of an interrogation, an accused or a person suspected of an offense is entitled to consult with counsel as provided by paragraph (2) of this subdivision, to have such counsel present at the interrogation, and to be warned of these rights prior to the interrogation if—

(A) The interrogation is conducted by a person subject to the code who is required to give warnings under Article 31 and the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way; or

(B) The interrogation is conducted by a person subject to the code acting in a law enforcement capacity, or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of the charges.

(2) *Counsel.* When a person entitled to counsel under this rule requests counsel, a judge advocate or an individual certified in accordance with Article 27(b) shall be provided by the United States at no expense to the person and without regard to the person's indigency or lack thereof before the interrogation may proceed. In addition to counsel supplied by the United States, the person may retain civilian counsel at no expense to the United States. Unless otherwise provided

by regulations of the Secretary concerned, an accused or suspect does not have a right under this rule to have military counsel of his or her own selection.

(e) *Presence of Counsel.*

(1) *Custodial interrogation .* Absent a valid waiver of counsel under subdivision (g)(2)(B), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described under subdivision (d)(1)(A) of this rule, and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

(2) *Post –referral interrogation .* Absent a valid waiver of counsel under subdivision (g)(2)(C), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subdivision (d)(1)(B) of this rule, and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed.

(f) *Exercise of rights.*

(1) *The privilege against self-incrimination.* If a person chooses to exercise the privilege against self-incrimination under this rule, questioning must cease immediately.

(2) *The right to counsel.* If a person subjected to interrogation under the circumstances described in subdivision (d)(1) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.

(g) *Waiver.*

(1) *General rule.* After receiving applicable warnings under this rule, a person may waive the rights described therein and in Mil. R. Evid. 301 and make a statement. The waiver must be made freely, knowingly, and intelligently. A written waiver is not required. The accused or suspect must acknowledge affirmatively that he or she understands the rights involved, affirmatively decline the right to counsel and affirmatively consent to making a statement.

(2) *Counsel.*

(A) If the right to counsel in subdivision (d) is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(B) If an accused or suspect interrogated under

circumstances described in subdivision (d)(1)(A) re-requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that—

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(C) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(B) re-requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.

(h) *Nonmilitary interrogations.*

(1) *General rule.* When a person subject to the code is interrogated by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, and such official or agent is not required to give warning under subdivision.

(c), the person's entitlement to rights warnings and the validity of any waiver of applicable rights shall be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar interrogations.

(2) *Foreign interrogations.* Neither warnings under subdivisions (c) or (d), nor notice to counsel under subdivision (e) are required during an interrogation conducted abroad by officials of a foreign government or their agents unless such interrogation is conducted, instigated, or participated in by military personnel or their agents or by those officials or agents listed in subdivision (h)(1). A statement obtained during such an interrogation is involuntary within the meaning of Mil. R. Evid. 304(b)(3) if it is obtained through the use of coercion, unlawful influence, or unlawful inducement. An interrogation is not "participated in" by military personnel or their agents or by the officials or agents listed in subdivision (h)(1)

merely because such a person was present at an interrogation conducted in a foreign nation by officials of a foreign government or their agents, or because such a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign interrogation.

Rule 306. Statements by one of several accused

When two or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the accused may not be received in evidence unless all references inculcating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination.

Rule 311. Evidence obtained from unlawful searches and seizures

(a) *General rule.* Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) *Objection.* The accused makes a timely motion to suppress or an objection to the evidence under this rule; and

(2) *Adequate interest.* The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces.

(b) *Exceptions.*

(1) Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

(2) Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

(3) Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) The search or seizure resulted from an authorization to search, seize or apprehend issued by an individual competent to issue the authorization

under Mil. R. Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority;

(B) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(C) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith shall be determined on an objective standard.

(c) *Nature of search or seizure.* A search or seizure is “unlawful” if it was conducted, instigated, or participated in by:

(1) *Military personnel.* Military personnel or their agents and was in violation of the Constitution of the United States as applied to members of the armed forces, an Act of Congress applicable to trials by court-martial that requires exclusion of evidence obtained in violation thereof, or Mil. R. Evid. 312–317;

(2) *Other officials.* Other officials or agents of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States or any political subdivision of such a State, Commonwealth, or possession and was in violation of the Constitution of the United States, or is unlawful under the principles of law generally applied in the trial of criminal cases in the United States district courts involving a similar search or seizure; or

(3) *Officials of a foreign government.* Officials of a foreign government or their agents and was obtained as a result of a foreign search or seizure which subjected the accused to gross and brutal maltreatment. A search or seizure is not “participated in” merely because a person is present at a search or seizure conducted in a foreign nation by officials of a foreign government or their agents, or because a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign search or seizure.

(d) *Motions to suppress and objections.*

(1) *Disclosure.* Prior to arraignment, the prosecution shall disclose to the defense all evidence seized from the person or property of the accused, or believed to be owned by the accused, that it intends to offer into evidence against the accused at trial.

(2) *Motion or objection.*

(A) When evidence has been disclosed under subdivision (d)(1), any motion to suppress or objection under this rule shall be made by the

defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the motion or objection.

(B) If the prosecution intends to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment, the prosecution shall provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interest of justice.

(C) If evidence is disclosed as derivative evidence under this subdivision prior to arraignment, any motion to suppress or objection under this rule shall be made in accordance with the procedure for challenging evidence under (A). If such evidence has not been so disclosed prior to arraignment, the requirements of (B) apply.

(3) *Specificity.* The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the search or seizure, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(4) *Rulings.* A motion to suppress or an objection to evidence made prior to plea shall be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at the trial of the general issue or until after findings, but no such determination shall be deferred if a party’s right to appeal the ruling is affected adversely. Where factual issues are involved in ruling upon such motion or objection, the military judge shall state essential findings of fact on the record.

(e) *Burden of proof.*

(1) *In general.* When an appropriate motion or objection has been made by the defense under subdivision

(d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been

obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or search warrant or arrest warrant.

(2) *Derivative evidence.* Evidence that is challenged under this rule as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence ultimately would have been obtained by lawful means even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize or apprehend or a search warrant or an arrest warrant. Notwithstanding other provisions of this Rule, an apprehension made in a dwelling in a manner that violates R.C.M. 302

(d)(2) and (e) does not preclude the admission into evidence of a statement of a n individual apprehended provided (1) that the apprehension was based on probable cause, (2) that the statement was made subsequent to the apprehension at a location outside the dwelling, and (3) that the statement was other-wise in compliance with these rules.

(3) *Specific motions or objections.* When a specific motion or objection has been required under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(f) *Defense evidence.* The defense may present evidence relevant to the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the search or seizure giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothingsaid by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(g) *Scope of motions and objectives challenging probable cause..*

(1) *Generally.* If the defense challenges evidence seized pursuant to a search warrant or search authorization on the grounds that the warrant or authorization was not based upon probable cause , the evidence relevant to the motion is limited to evidence concerning the information actually presented to or otherwise known by the authorizing officer, except as provided in paragraph (2).

(2) *False statements.* If the defense makes a subst ant ial p re li m i n a r y s h o w i n g t h a t a g o v e r n m e n t agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, shall be entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation f knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion shall be granted unless the search is otherwise lawful under these rules.

(h) *Objections to evidence seized unlawfully.* If a defense motion or objection under this rule is sus-tained in whole or in part, the members may not be informed of that fact except insofar as the military judge must instruct the members to disregard evidence.

(i) *Effect of guilty plea.* Except as otherwise ex-p r e s s l y p r o v i d e d i n R . C . M . 9 1 0 (a) (2) , a p l e a o f guilty to an offense that results in a finding of guilty waives all issues under the Fourth Amendment to the Constitution of the United States and Mil. R. Evid. 311-317 with respect to the offense whether or not raised prior to plea.

Rule 312. Body views and intrusions

(a) *General rule .* Evidence obtained from body views and intrusions conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Visual examination of the body.*

(1) *Consensual.* Visual examination of the unclothed body may be made with the consent of the individual subject to the inspection in accordance with Mil. R. Evid. 314(e).

(2) *Involuntary.* An involuntary display of the unclothed body, including a visual examination of body cavities, may be required only if conducted in reasonable fashion and authorized under the following provisions of the Military Rules of Evidence: inspections and inventories under Mil. R. Evid. 313; searches under Mil. R. Evid. 314(b) and 314(c) if there is a reasonable suspicion that weapons, contra-band, or evidence of crime is concealed on the body of the person to be searched; searches within jails and similar facilities under Mil. R. Evid. 314(h) if reasonably necessary to maintain the security of the institution or its personnel; searches incident to lawful apprehension under Mil. R. Evid. 314(g); emergency searches under Mil. R. Evid. 314(i); and probable cause searches under Mil. R. Evid. 315. An examination of the unclothed body under this rule should be conducted whenever practicable by a person of the same sex as that of the person being examined; provided, however, that failure to comply with this requirement does not make an examination an unlawful search within the meaning of Mil. R. Evid. 311.

(c) *Intrusion into body cavities.* A reasonable non-consensual physical intrusion into the mouth, nose, and ears may be made when a visual examination of the body under subdivision (b) is permissible. Non-consensual intrusions into other body cavities may be made:

(1) *For purposes of seizure.* When there is a clear indication that weapons, contraband, or other evidence or crime is present, to remove weapons, contraband, or evidence of crime discovered under subdivisions (b) and (c)(2) of this rule or under Mil. R. Evid. 316(d)(4)(C) if such intrusion is made in a reasonable fashion by a person with appropriate medical qualifications; or

(2) *For purposes of search.* To search for weapons, contraband, or evidence of crime if authorized by a search warrant or search authorization under Mil. R. Evid. 315 and conducted by a person with appropriate medical qualifications. Notwithstanding this rule, a search under Mil. R. Evid. 314(h) may be made without a search warrant

or authorization if such search is based on a reasonable suspicion that the individual is concealing weapons, contraband, or evidence of crime.

(d) *Extraction of body fluids.* Nonconsensual extraction of body fluids, including blood and urine, may be made from the body of an individual pursuant to a search warrant or a search authorization under Mil. R. Evid. 315. Nonconsensual extraction of body fluids may be made without such warrant or authorization, notwithstanding Mil. R. Evid. 315 (g), only when there is clear indication that evidence of crime will be found and that there is reason to believe that the delay that would result if a warrant or authorization were sought could result in the destruction of the evidence. Involuntary extraction of body fluids under this rule must be done in a reasonable fashion by a person with appropriate medical qualifications.

(e) *Other intrusive searches.* Nonconsensual intrusive searches of the body made to locate or obtain weapons, contraband, or evidence of crime and not within the scope of subdivisions (b) or (c) may be made only upon search warrant or search authorization under Mil. R. Evid. 315 and only if such search is conducted in a reasonable fashion by a person with appropriate medical qualifications and does not endanger the health of the person to be searched. Compelling a person to ingest substances for the purposes of locating the property described above or to compel the bodily elimination of such property is a search within the meaning of this section. Notwithstanding this rule, a person who is neither a suspect nor an accused may not be compelled to submit to an intrusive search of the body for the sole purpose of obtaining evidence of crime.

(f) *Intrusions for valid medical purposes.* Nothing in this rule shall be deemed to interfere with the lawful authority of the armed forces to take whatever action may be necessary to preserve the health of a servicemember. Evidence or contraband obtained from an examination or intrusion conducted for a valid medical purpose may be seized and is not evidence obtained from an unlawful search or seizure within the meaning of Mil. R. Evid. 311.

(g) *Medical qualifications.* The Secretary concerned may prescribe appropriate medical qualifications for persons who conduct searches and seizures under this rule.

Rule 313. Inspections and inventories in the

armed forces

(a) *General rule.* Evidence obtained from inspections and inventories in the armed forces conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Inspections.* An "inspection" is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. An inspection may include but is not limited to an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or air worthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty. An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband. An order to produce body fluids, such as urine, is permissible in accordance with this rule. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule. If a purpose of an examination is to locate weapons or contraband, and if: (1) the examination was directed immediately following a report of a specific offense in the unit, organization, installation, vessel, aircraft, or vehicle and was not previously scheduled; (2) specific individuals are selected for examination; or (3) persons examined are subjected to substantially different intrusions during the same examination, the prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this rule. Inspections shall be conducted in a reasonable fashion and shall comply with Mil. R. Evid. 312, if applicable. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected. Unlawful weapons, contraband, or other evidence of crime located during an inspection may be seized.

(c) *Inventories.* Unlawful weapons, contraband,

or other evidence of crime discovered in the process of an inventory, the primary purpose of which is administrative in nature, may be seized. Inventories shall be conducted in a reasonable fashion and shall comply with Mil. R. Evid. 312, if applicable. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this rule.

Rule 314. Searches not requiring probable cause

(a) *General rule.* Evidence obtained from reasonable searches not requiring probable cause conducted pursuant to this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Border searches.* Border searches for customs or immigration purposes may be conducted when authorized by Act of Congress.

(c) *Searches entry to or exit from United States installations, aircraft, and vessels abroad.* In addition to the authority to conduct inspections under Mil. R. Evid. 313 (b), a commander of a United States military installation, enclave, or aircraft on foreign soil, or in foreign or international airspace, or a United States vessel in foreign or international waters, may authorize appropriate personnel to search persons or the property of such persons upon entry to or exit from the installation, enclave, aircraft, or vessel to ensure the security, military fitness, or good order and discipline of the command. Such searches may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party. Failure to comply with a treaty or agreement, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceeding is not authorized by this subdivision.

(d) *Searches of government property.* Government property may be searched under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions

sions normally are issued for personal use; but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

(e) *Consent searches.*

(1) *General rule.* Searches may be conducted of any person or property with lawful consent.

(2) *Who may consent.* A person may consent to a search of his or her person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(3) *Scope of consent.* Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(4) *Voluntariness.* To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(5) *Burden of proof.* Consent must be shown by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the burden of proof.

(f) *Searches incident to a lawful stop.*

(1) *Stops.* A person authorized to apprehend under R.C.M. 302(b) and others performing law enforcement duties may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

(2) *Frisks.* When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. Contraband or evidence located in the process of a lawful frisk may be seized.

(3) *Motor vehicles.* When a person lawfully stopped is the driver or a passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if the official who made the stop has a reasonable belief that the person stopped is dangerous and that the person stopped may gain immediate control of a weapon.

(g) *Searches incident to a lawful apprehension.*

(1) *General rule.* A person who has been lawfully apprehended may be searched.

(2) *Search for weapons and destructible evidence.*

A search may be conducted for weapons or destructible evidence, in the area within the immediate control of a person who has been apprehended. The area within the person's "immediate control" is the area which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property; provided, that the passenger compartment of an automobile, and containers within the passenger compartment may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless whether the person apprehended has been removed from the vehicle.

(3) *Examination for other persons.*

(A) When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(B) Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

(h) *Searches within jails, confinement facilities, or similar facilities.* Searches within jails, confinement facilities, or similar facilities may be authorized by persons with authority over the institution.

(i) *Emergency searches to save life or for related purposes.* In emergency circumstances to save life or for a related purpose, a search may be conducted of

persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(j) *Searches of open fields or woodlands.* A search of open fields or woodlands is not an unlawful search within the meaning of Mil. R. Evid. 311.

(k) *Other searches.* A search of a type not otherwise included in this rule and not requiring probable cause under Mil. R. Evid. 315 may be conducted when permissible under the Constitution of the United States as applied to members of the armed forces.

Rule 315. Probable cause searches

(a) *General rule.* Evidence obtained from searches requiring probable cause conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) *Definitions.* As used in these rules:

(1) *Authorization to search.* An "authorization to search" is an express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) *Search warrant.* A "search warrant" is an express permission to search and seize issued by competent civilian authority.

(c) *Scope of authorization.* A search authorization may be issued under this rule for a search of:

(1) *Persons.* The person of anyone subject to military law or the law of war wherever found;

(2) *Military property.* Military property of the United States or of non-appropriated fund activities of an armed force of the United States wherever located;

(3) *Persons and property within military control.* Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) *Non military property within a foreign country.*

(A) Property owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense when situated in a foreign country. A search of such property may not be conducted without the

concurrence of an appropriate representative of the agency concerned. Failure to obtain such concurrence, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311.

(B) Other property situated in a foreign country. If the United States is a party to a treaty or agreement that governs a search in a foreign country, the search shall be conducted in accordance with the treaty or agreement. If there is no treaty or agreement, concurrence should be obtained from an appropriate representative of the foreign country with respect to a search under paragraph (4)(B) of this subdivision. Failure to obtain such concurrence or noncompliance with a treaty or agreement, however, does not render a search unlawful within the meaning of Mil. R. Evid. 311.

(d) *Power to authorize.* Authorization to search pursuant to this rule may be granted by an impartial individual in the following categories:

(1) *Commander.* A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) *Military judge.* A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned. An otherwise impartial authorizing official does not lose the character merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(e) *Power to search.* Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any

such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

(f) *Basis for Search authorizations.*

(1) *Probable cause requirement.* A search authorization issued under this rule must be based upon probable cause.

(2) *Probable cause determination.* Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule shall be based upon any or all of the following:

(A) Written statements communicated to the authorizing officer;

(B) Oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(C) Such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements.

(g) *Exigencies.* A search warrant or search authorization is not required under this rule for a search based on probable cause when:

(1) *Insufficient time.* There is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(2) *Lack of communications.* There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with a person empowered to grant a search warrant or authorization and there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought;

(3) *Search of operable vehicle.* An operable vehicle is to be searched, except in the circumstances where a search warrant or authorization is required by the Constitution of the United States, this Manual, or these rules; or

(4) *Not required by the Constitution.* A search warrant or authorization is not otherwise required by the Constitution of the United States as applied to members of the armed forces. For purpose of this rule, a vehicle is "operable" unless a reasonable person would have known at the time of search that the vehicle was not functional for purposes of transportation.

(h) *Execution.*

(1) *Notice.* If the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should when possible notify him or her of the act of authorization and the general substance of the authorization. Such notice may be made prior to or contemporaneously with the search. Failure to provide such notice does not make a search unlawful within the meaning of Mil. R. Evid. 311.

(2) *Inventory.* Under regulations prescribed by the Secretary concerned, and with such exceptions as may be authorized by the Secretary, an inventory of the property seized shall be made at the time of a seizure under this rule or as soon as practicable thereafter. At an appropriate time, a copy of the inventory shall be given to a person from whose possession or premises the property was taken. Failure to make an inventory, furnish a copy thereof, or otherwise comply with this paragraph does not render a search or seizure unlawful within the meaning of Mil. R. Evid. 311.

(3) *Foreign searches.* Execution of a search authorization outside the United States and within the jurisdiction of a foreign nation should be in conformity with existing agreements between the United States and the foreign nation. Noncompliance with such an agreement does not make an otherwise lawful search unlawful.

(4) *Search warrants.* Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable Act of Congress.

Rule 316. Seizures

(a) *General rule.* Evidence obtained from seizures

conducted in accordance with this rule is admissible at trial if the evidence was not obtained as a result of an unlawful search and if the evidence is relevant and not otherwise inadmissible under these rules.

(b) *Seizure of property* . Probable cause to seize property or evidence exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

(c) *Apprehension* . Apprehension is governed by R.C.M. 302.

(d) *Seizure of property or evidence*.

(1) *Abandoned property*. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(2) *Consent*. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Mil. R. Evid.

314.

(3) *Government property* . Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subdivision (e), unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided in Mil. R. Evid. 314(d), at the time of the seizure.

(4) *Other property*. Property or evidence not included in paragraph (1)-(3) may be seized for use in evidence by any person listed in subdivision (e) if:

(A) *Authorization*. The person is authorized to seize the property or evidence by a search warrant or a search authorization under Mil. R. Evid. 315;

(B) *Exigent circumstances* . The person has probable cause to seize the property or evidence and under Mil.R. Evid.315 (g) a s e a r c h w a r r a n t o r search authorization is not required; or (C) *Plain view*. The person while in the course of otherwise lawful activity observes in a reasonable fashion property or evidence that the person has probable cause to seize.

(5) *Temporary detention* . Nothing in this rule shall prohibit temporary detention of property on less than probable cause when authorized under the Constitution of the United States.

(e) *Power to seize*. Any commissioned officer, war-rant officer, petty officer, noncommissioned

officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police, or shore patrol, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

(f) *Other seizures*. A seizure of a type not otherwise included in this rule may be made when permissible under the Constitution of the United States as applied to members of the armed forces.

Rule 317. Interception of wire and oral communications

(a) *General rule*. Wire or oral communications constitute evidence obtained as a result of an unlawful search or seizure within the meaning of Mil. R. Evid. 311 when such evidence must be excluded under the Fourth Amendment to the Constitution of the United States as applied to members of the armed forces or if such evidence must be excluded under a statute applicable to members of the armed forces.

(b) *Authorization for judicial applications in the United States*. Under 18 U.S.C. § 2516(1), the Attorney General, or any Assistant Attorney General specially designated by the Attorney General may authorize an application to a federal judge of competent jurisdiction for, and such judge may grant in conformity with 1 8 U. S.C. § 2518, an order authorizing or approving the interception of wire or oral communications by the Department of Defense, the Department of Transportation, or any Military Department for purposes of obtaining evidence concerning the offenses enumerated in 18 U.S.C. § 2516(1), to the extent such offenses are punishable under the Uniform Code of Military Justice.

(c) *Regulations*. Notwithstanding any other provision of these rules, members of the armed forces or their agents may not intercept wire or oral communications for law enforcement purposes unless such interception:

(1) takes place in the United States and is authorized under subdivision (b);

(2) takes place outside the United States and is authorized under regulations issued by the Secretary of Defense or the Secretary concerned; or

(3) is authorized under regulations issued by the Secretary of Defense or the Secretary concerned and is not unlawful 18 U.S.C.\$2511.

Student Handout 3

This student handout contains an extract from FM 19-10.

STUDENT HANDOUT 3

The Fourth Amendment to the Constitution provides that the right of the people to be free from unreasonable searches and seizures shall not be violated. It also provides that no warrants shall be issued except upon "probable cause." And without probable cause no search is admissible in a court of law unless it is incident to a lawful apprehension, conducted with the consent of the person searched, or is otherwise legal.

There is probable cause to search when there are reasonable grounds to believe that items connected with criminal activity are located in the place (room and barracks, privately owned vehicle, or quarters) or on the person to be searched. MP must know and understand search and seizure procedures to function effectively within the law.

During raids MP must adhere to laws governing jurisdiction and authority, search and seizure, apprehension, and use of force in order to ensure evidence obtained is admissible in court. MP must understand the procedures involved in obtaining a search warrant or authorization. Probable cause must be shown before getting a search authorization. The seizure of items for use as evidence is limited. The items must be specified in the search authorization, or they must be in plain view; any illegal articles that are found are confiscated. Seized property or evidence is receipted. Receipting for seized property establishes its accountability and chain of custody.

CONTENTS	Page
DETERMINING SCOPE OF AUTHORIZED SEARCH	91
Authorizing a Search	94
Determining Probable Cause	94
Reliability Test	95
Plain View	96
DETERMINING ARTICLES SUBJECT TO SEARCH AND SEIZURE	96
CONDUCTING ENTRY AND SEARCH TO PROTECT PERSONS OR PROPERTY	97
CONDUCTING AN IDENTIFICATION SEARCH	97
CONDUCTING AN AUTOMOBILE SEARCH	98
CONDUCTING AN AREA SEARCH	99
CONDUCTING A CONSENT SEARCH	100
CONDUCTING A SEARCH OF ABANDONED PROPERTY	100
CONDUCTING A TRASH AND GARBAGE CONTAINER SEARCH	100
CONDUCTING A SEARCH OF PREMISES WITHOUT RIGHT TO PRIVACY	100
CONDUCTING A FIRE SEARCH	100
MAINTAINING STATUS QUO OR FREEZING THE SITUATION	101
CONDUCTING A BODY CAVITY SEARCH	101
SEIZING BODY FLUIDS	101
CONDUCTING A FRISK	101
CONDUCTING INVENTORIES	102
CONDUCTING INSPECTIONS	102
CONDUCTING RAIDS	103
Planning a Raid	103
Determining Raiding Party	105
Composition	106
Determining Equipment Requirements	106
Performing Reconnaissance	106
Executing a Raid	107

DETERMINING SCOPE OF AN AUTHORIZED SEARCH

Once authorization to search has been obtained, the person conducting the search must carefully comply with the limitations imposed by the authorization. Only those locations described in the authorization may be searched and the search may be conducted only in areas where it is likely that the object of the search will be found. For example, if an investigator

has authority to search the quarters of a subject, the investigator may not search a car parked on the road outside. Likewise, if the authorization states that the MP is looking for a 25-inch television, that MP may not look into areas unlikely to contain a television, such as a medicine cabinet or file cabinet.

An authorization to search for contraband implicitly carries the limited authority to detain

occupants of a home, apartment, or barracks room while the search is conducted. Also, the

MP may detain occupants leaving the premises at the time the MP arrive to execute the search authorization

AUTHORIZING A SEARCH

The commander may authorize the search of a person or place under his command when there is probable cause to believe that items connected with criminal activities are located in the place or on the person to be searched. When time permits, the commander consults the office of the SJA. A commander may not delegate his or her authority to authorize a search to another individual in the unit. However, the power may devolve to the next senior person present when the commander is absent or when circumstances are such that the commander cannot be contacted.

When there is a military magistrate or judge on an installation, law enforcement personnel may obtain the magistrate's or judge's authorization to search, following the procedures set forth in AR 27-10. Law enforcement personnel can also seek the commander's authorization. Federal magistrates have powers similar to military judges but are limited in area and authority by their respective district court.

AR 27-10 sets out the procedures for obtaining an authorization to search. Information in the form of statements, either written or oral (and which can be transmitted by telephone or radio), must be presented to a commander, magistrate, or military judge. It is not mandatory that these statements be sworn, but an oath may be required by the authorizing official and, in a close case, an oath may be the factor which determines admissibility. The authorizing official will then decide, based upon the statements, whether or not probable cause to search exists. Once the authorizing official determines that probable cause exists, the official will issue either an oral or a written authorization to search. Even though there is no general requirement that probable cause statements or the authorization to search be in writing, various commands or units may impose additional requirements. Strict adherence to

these requirements is mandatory. The authorizing official must specify the place to be searched and the things to be seized.

DETERMINING PROBABLE CAUSE

To determine if probable cause exists, the authorizing official will evaluate whether or not the information furnished to him is reliable and reasonably warrants his acting on the basis of that information. The overall issue of reasonableness is composed of two elements. The first is the source's basis of knowledge, which may be established by--

- Personal observation.
- Statement of the person or accomplice to be searched.
- Self-verifying detail.
- Corroboration.

The basis of knowledge can be established by showing that the commander personally observed the criminal activities himself, or that he is basing his authorization on the fact that a third party personally observed the criminal activity, that this fact has been related to him, and that such information has been corroborated or substantiated.

In the drug area, personal observation must also include facts indicating there is a basis for belief that what was seen were drugs (that is, the commander has had a class on drug identification, or the third party has had a class on drug identification or has furnished reliable information in the past as to the particular drug in question).

The commander or the person seeking the authorization from the commander may have trustworthy information that items connected with criminal activities are located in the place to be searched based on information obtained from a statement of the individual to be searched or an accomplice of the individual to be searched.

One way to pass the basis of knowledge test is by showing that the tip was so detailed that the information must have been

obtained as a result of a personal observation by the informant or from a statement of the defendant or an accomplice. The best example of when a tip is self-verifying is the one the Supreme Court used in *Draper v. United States* (*Illinois v. Gates*, 1983; *Massachusetts v. Upton*, 1984).

In the above case, the arresting police officer had received a tip from an informant that the defendant had departed Denver, Colorado, to travel to Chicago. The informant (1) said the defendant would return by train on 8 or 9 September; (2) described the defendant's physical appearance; (3) indicated that the defendant would be carrying a tan zipper bag; (4) said the defendant walks with a fast gait; and (5) said the defendant would be carrying heroin. Before making the arrest, the arresting police officer verified facts 1 through 4.

The court indicated that the tip was so detailed that it could conclude that the informant obtained his information in a trustworthy manner, such as by personal observation or a statement of the defendant or a combination of the two.

When the police officer can verify a number of the items listed in the informant's tip, the conclusion is that the other items in the tip must also be true. The best example of corroboration is, again, *Draper v. United States*. A number of courts have indicated that the Draper situation could apply to not only train stations but airports or rendezvous-type situations with automobiles. In the case of an anonymous tip, this corroboration is extremely important and may be essential to a finding of probable cause.

Reliability Test

The commander must also be satisfied as to the credibility of the person furnishing the information. This has been called the reliability test and may be established by one or more of the following:

- Demeanor of the individual furnishing the information to the commander.
- Statement of past reliability.
- Corroboration.
- Statement from victim or eyewitness of offense.
- Declaration against interest.
- Information from other law enforcement officials.
- Information obtained from senior NCOs and above as a result of being passed through the chain of command.

When the information is personally given to the commander--not by an MP, but by the third party who obtained the information--the commander can judge the individual source's reliability at that time. In many cases the individual may be a member of the commander's unit; thus, the commander is in the best situation to judge the credibility of the person. Even when the person is not a member of the authorizing commander's unit, it is an eyeball-to-eyeball situation in which the commander can question the individual and determine the consistency of statements made by the individual. The eyeball-to-eyeball situation may either lend to or detract from establishing credibility. The same is true when the individual is a member of the commander's unit. Again, the commander's personal knowledge of the informant can lend to or detract from establishing credibility. Corroboration and demeanor of the person are particularly important when questioning first-time sources with no established record of past reliability.

One of the easiest methods for determining reliability is to know that the informant has proven reliable in the past. There should be some indication as to the underlying circumstances of past reliability--such as this informant has furnished correct information three times in the past about wrongful possession of a particular type of drug, naming the drug. The person furnishing the information to USACIDC and then to the commander may furnish information that is against the person's penal interest--such as he is

aware he is admitting an offense, and he has not been promised any benefit. Thus, he may be prosecuted himself. This lends a great degree of reliability to the information furnished.

Obtaining information from other law enforcement officials through normal channels gives a presumption of reliability concerning the information. This factor comes into play when the desk sergeant puts out an all-points bulletin. It is not necessary for the apprehending MP to personally obtain the information from the source. Of course, the original source of the information must satisfy the reliability test. But this determination can be made later and need not be made by the MP who received the all-points bulletin. In other words, reliance on another MP is considered to be reasonable. The same is true for reliance on the report of the victim of a crime. Remember if acting on the basis of an anonymous tip, corroboration of the information may be essential to a finding of probable cause.

Plain View

An MP who is lawfully in any place may, without obtaining a warrant or a commander's authorization, seize any item in plain view or smell which he has probable cause to believe is contraband or evidence of a crime. This is so even if the seizable item is not related in any way to the crime that the MP is investigating. Seeing an item in plain view in proximity to an individual may justify an apprehension or further search of the same area or another area. An MP may use binoculars, flashlight, or in some cases, a ladder or stool. The same rationale that applies for plain view also applies for plain smell.

DETERMINING ARTICLES SUBJECT TO SEARCH AND SEIZURE

Items can be subject to seizure when specified in a legal search warrant, during a search

search. All seized items should be clearly marked with the initials of the person making

The commander or MP can lawfully apprehend or search during a lawful, hot pursuit. They also may lawfully apprehend or search while conducting an investigation at a unit or office premises.

Listed are a few of the places where the commander or MP can lawfully apprehend or search:

- Areas of public or private property normally accessible to the public or to the public view.
- Any place with the consent of a person empowered to give such consent.
- Any place pursuant to an authorization to search the particular place.
- Any place where the circumstances dictate an immediate police response to protect life or prevent serious damage to property.
- Any place to effect a lawful apprehension, such as business, home, on the street, or in a vehicle. (In the absence of exigent circumstances, a prior authorization is required to apprehend someone in a private residence.)

While on patrol, an MP may observe an item in a parked car; or while making a routine spot check of a vehicle, the MP may notice something that will aid in a criminal prosecution. The MP may seize that item.

When an MP is lawfully at a place to make an apprehension, he may not examine the entire premises solely to look for evidence. With an apprehension authorization, an MP may go to the on-post quarters to apprehend an individual for an offense. While standing in the foyer of the quarters, the MP may see some item that will aid in a criminal prosecution. He may seize the item that is visible from the foyer. He may not, without invitation, go to the other rooms of the house.

conducted under a commander's authorization, or during an otherwise lawful

the seizure and the military date and time. While it may be desirable to seize property in the

presence of the accused, it is not mandatory; however, a DA Form 4137 must be issued and the chain of custody maintained.

During a lawful search, any evidence relating to crimes other than that specified by the search

CONDUCTING ENTRY AND SEARCH TO PROTECT PERSONS OR PROPERTY

A commanding officer or noncommissioned officer may search government property used in connection with assigned duties (such as desks and filing cabinets located in an individual's assigned office or building) to look for contraband or property held in a representative capacity. Any evidence found in the desk may be admissible at a trial.

An MP may make a warrantless entry into any premises whenever he has reason to believe that it is necessary to prevent injury to persons, to prevent serious damage to property, or to render aid to someone in danger.

While on patrol in the housing areas or barracks area, an MP may hear sounds of a fight or cries for help coming from a building. Upon hearing these sounds, he may enter the building to prevent injury or damage. Once the danger or emergency conditions have ceased, he may take only the necessary steps to carry out the purpose of the original entry.

An MP, who is pursuing a person who he has probable cause to believe is armed and has just committed a serious crime, may enter a vehicle or building believed to have been entered by the suspect and may search the multiple dwelling unit or vehicle for the person or any weapons that might be used to further his escape. Once the individual

warrant or search authorization may be seized, provided it is in plain sight during the search or in a place where the specified evidence could reasonably be found.

pursued is apprehended, the search will be limited by the search incident to apprehension rules.

When the person pursued is not found on the premises, the MP may search the premises for evidence of the suspect's identity or the location to which he is fleeing if it is unknown.

The hot pursuit rule will apply when the MP receives a report of an armed robbery or rape and shortly thereafter receives the description of the person who has committed the offense, and pursues the suspect, at which point the suspect enters a quarters on post. He and the other MP may enter the building (for example, quarters or house) and search wherever the suspect may be hiding.

An MP may go to the on post quarters of an individual when the MP has been notified of a domestic disturbance. At the particular house, the officer will try to quell the disturbance, and if the MP views any contraband or any other item which he reasonably believes to be evidence of criminal activity, these items may be seized. Additionally, the disturbance may be such as to give the MP a basis for apprehending one of the individuals at the home. Thereafter, a search incident to the apprehension may be conducted.

CONDUCTING AN IDENTIFICATION SEARCH

An identification search applies to an incapacitated person or to an unsecured or stolen vehicle. An MP may examine the personal effects of any person who appears to be incapacitated, to learn either the cause of the incapacitation or to identify the individual.

When MP are called to a barracks, they may find an individual unconscious because of an overdose of prescription drugs or a prohibited substance. The MP may

gain entry to the room and call for medical help. After the call for medical help, the MP may search the immediate area and the personal effects of the individual to obtain evidence of identity. The MP may also search the immediate area to determine what substance was used to overdose, so medics can treat the illness properly.

An MP on patrol at night may observe a car in a parking lot after the establishment has closed. If someone is observed in the vehicle apparently unconscious, it is proper for the MP to open the vehicle, learn if the individual is unconscious, notify a doctor, and then obtain evidence of the identification either from the individual or from the car itself.

An MP who finds a vehicle unsecured--one that is registered on post or has a visitor's pass and is capable of being secured--will secure the vehicle, leaving a note that the individual who owns the vehicle should secure it himself next time. If the vehicle registered on post cannot be secured, the MP will attempt to learn the identity of the owner by first calling the PM office if time permits and, if not, by searching the vehicle for identification. If the vehicle is not registered on post or does

not have a visitor's pass, the MP may search the vehicle for identification.

If while searching the unsecured car, the owner of the vehicle is identified, the person making the search for identification will attempt to contact the owner and ask him to secure his vehicle in the future. If while looking for identification evidence of a crime is found, the evidence may be seized and may lead to appropriate action against the individual for criminal conduct.

If the owner of the vehicle cannot be determined by looking for identification, the vehicle should be secured temporarily by the MP, and an attempt should be made through all available means to determine the owner or if the vehicle was stolen.

In some states license plate numbers may not be stored in a computer. It may be difficult to determine whether or not a vehicle is stolen unless the identity of the owner can be determined immediately.

When the MP is permitted to make a search for identification, the scope of the search is limited to areas such as glove compartments and consoles where owner and vehicle identification are normally kept. The scope of the search may also include reading documents that are lying in open view inside the car. Once identification has been established, the search is ended.

CONDUCTING AN AUTOMOBILE SEARCH

An apprehending MP may make a warrantless search of the interior of a car at the time and place of apprehension if there is probable cause to apprehend one of the occupants. The scope of the search can be extended to the entire automobile if there is probable cause to believe there is evidence in the trunk or under the hood. The warrantless search need not take place where the apprehension of the occupant took place if there is a valid reason for conducting the search at another place such as at an MP station. Where there has been a stop of an automobile, the MP stopping the automobile may make a protective search of the passenger compartment of the

automobile if the MP possesses reasonable suspicion that the vehicle contains weapons potentially dangerous to the MP. Whether or not reasonable suspicion exists depends on the same factors discussed later for a frisk of an individual. The investigative search extends to those parts of the passenger compartment in which a weapon may be placed or hidden. Just because there is a stop of an automobile does not mean the MP may conduct an investigative search.

When an individual is stopped for a robbery that has occurred on post

and the driver is apprehended on post and taken to the MP station, the car may also be taken to the MP station. If the robbery has recently taken place, there may be probable cause to believe the car contains evidence of the robbery, and it may be searched at the MP station, even though there is no authorization from the commanding officer to search the vehicle.

An individual may be stopped for a traffic offense, and the MP may see items in plain view such as drugs or drug paraphernalia or evidence

of other crime. This would give the MP probable cause to believe that other evidence is located in the vehicle. Thus, the vehicle can be searched there or it can be taken to the MP station where a search of the entire vehicle may be made. If the car was not in motion prior to the owner being taken into custody, and there is no likelihood of the vehicle being removed by a third party, a search warrant should be obtained to search the vehicle..

CONDUCTING AN AREA SEARCH

If an offender has left the scene, an adequate number of MP teams should be detailed to participate in an area search. An area search is conducted by using the quadrant method. The area to be searched is divided into four equal pie-shaped wedges radiating outward from the crime scene. One or more units are assigned to each quadrant. The search is begun at the outer perimeter of the quadrant. Units search inward toward the crime scene using a zigzag pattern. It is recommended that units overlap each other's patterns to ensure complete area coverage.



The search for the offender continues until an apprehension is made or the search is abandoned.

In initiating a search, speed is important. Patrol personnel should not wait until a complete description of the offender and/or vehicle is obtained. They should immediately deploy with the information available and start the search. Further

information can be forwarded to units in the field by radio or other means of communications as it is made available.

An area search may be conducted by using a motor vehicle or setting up a fixed post. Or a foot search may be conducted. When conducting a motor vehicle search patrol personnel remain in their vehicles and conduct a rapid area search of fields, parking lots, sidewalks, large thoroughway alleys, and roads. They are limited in their ability to search because they are conspicuous in a patrol vehicle and thus easily avoided. Also, they are unable to search in detail behind bushes, in doorways, and so forth. Fixed posts are useful at intersections or other vantage points on possible escape routes. These positions can be either single vehicles or formal roadblocks. When conducting a foot search the patrol vehicle is parked, and the search is carried out on foot. Personnel conducting such a search should stop frequently and listen for sounds of the offender. Trees, bushes, and other concealment should be used to protect approaching searchers from being seen by the suspect. Personnel in the area should be questioned. They may have seen the fleeing suspect or strange vehicles in the area. Foot searches can also be initiated to find witnesses and to look for evidence.

CONDUCTING A CONSENT SEARCH

An MP who wishes to make a search that is not otherwise authorized may do so if the person or persons in control of the immediate area or object to be searched voluntarily give their consent. To ensure that the consent is voluntary, the MP should warn the individual of his intent to search. Ideally the individual's consent would be in writing.

"I have no authorization to search. I would like to search you or a particular place."

If the person consents to a search, it will be a voluntary waiver of his Fourth Amendment rights. It must be voluntary and not

mere acquiescence to authority. A refusal to consent to search, like evasive answers to a question, may arouse suspicion, but this evasiveness is not enough to amount to probable cause to search. When you have the subject's consent, you may continue with the search without authorization. A pitfall of consensual search is that it may alert a suspect and permit him time to dispose of evidence or to escape from the installation.

One question a subject may ask is, "What happens if I do not consent to search?" The answer should be that appropriate action will be taken. If the subject persists, tell him you will *apply* for a search authorization. Do not tell him you will *get* one.

CONDUCTING A SEARCH OF ABANDONED PROPERTY

MP lawfully in any place may, without an authorization to search, recover any abandoned property and examine its contents for seizable items. While on patrol MP may observe an abandoned vehicle on an isolated road. It is proper to search the vehicle for any items that may be seized.

While on patrol an MP may apprehend an individual for a traffic offense. Prior to the vehicle coming to a complete halt, with the offender in it, he notices the offender throwing a small envelope from the vehicle. The MP may recover the envelope and seize any objects inside.

CONDUCTING A TRASH AND GARBAGE CONTAINER SEARCH

MP lawfully in any place may, without obtaining authorization to search, examine the contents of a trash or garbage container that is not located next to on-post quarters or not

located in the driveway of the on-post quarters. Thus, the garbage cans located on any street near the curb may be searched without authorization to search.

CONDUCTING A SEARCH OF PREMISES WITHOUT RIGHT TO PRIVACY

MP may, without authorization, search any premises to which a suspect no longer has a right of possession or has demonstrated a lack of intention to return.

An individual who has been a resident of the guest house, but who has checked out earlier in the day, has given up the right to object to a

search of his former room. Additionally, when an individual has left the guest house and has not returned for two or three days, and has not provided some intention of returning, that room may be searched. Any items found will be admissible in court.

CONDUCTING A FIRE SEARCH

After a fire in private quarters, the fire marshal and MPI may investigate the cause of the fire so long as the fire fighters are still present performing their duties. Once this investigation is discontinued and the MP and the fire fighters leave the scene, the MP may not return unless an authorization to search the premises without consent has been obtained or it is an emergency.

MAINTAINING STATUS QUO OR FREEZING THE SITUATION

In some instances, probable cause may not exist without further investigation, or the MP may want to seek advice from a SJA. In such situations, the MP may want to hold a house, room, or automobile in a status quo. Assume the husband has taken his spouse to the hospital because of a gunshot wound. He implies that he may have been involved with the crime

An emergency is when there is an immediate threat that the fire might rekindle.

When the premises are *completely* destroyed, investigators may return at any time to investigate the cause of the fire. Additionally, when fire officials leave because of darkness and smoke, they may return within a reasonable period to continue their investigation.

or that he knows what weapon was used, but he will not tell the MP where it is located. If the husband has been legally apprehended or is consensually at the MP station and there are no children in the family, the MP may want to place notices out on the premises that no one will be allowed to enter without MP permission.

CONDUCTING A BODY CAVITY SEARCH

Under certain situations, a search of body cavities may be permitted. Coordination with the

SJA is recommended before conducting a body cavity search.

SEIZING BODY FLUIDS

An individual may consent to giving a blood or urine sample. Nonconsensual extraction of blood and urine may be made pursuant to a search authorization. Nonconsensual extraction of blood or urine may be made without such an authorization only when there is a probable cause that evidence of crime will be found and when the delay that would result if an authorization were sought could result in the

destruction of the evidence. An order for the individual to give blood or to collect a urine specimen is permissible if done as part of a lawful inspection.

The voluntary and involuntary extraction of blood or urine must be done by a medical specialist, physician's assistant, medical doctor, or other person who is authorized to collect samples.

CONDUCTING A FRISK

An MP may frisk any person whom he has lawfully stopped when the MP reasonably suspects the person is carrying a concealed weapon or dangerous object, and the frisk is necessary to protect the MP or others. The frisk may be conducted immediately upon making the stop or at any time during the stop--whenever a reasonable suspicion to frisk arises.

the frisk is necessary for the protection of the MP or others.

A number of factors may be examined in determining whether or not there is reasonable suspicion that the individual is armed and that

Listed are a few factors that may give grounds for a frisk:

- Appearance.
- Actions.
- Prior knowledge of the individual stopped.
- Location of the stop and whether or not it is a high crime area.

- Time of day.
- Purpose behind the stop.
- Companions of the person stopped.

If, while conducting a frisk, an MP feels an object which he reasonably believes to be a weapon or dangerous item, he may seize this object.

CONDUCTING INVENTORIES

A commander may direct an inventory of an individual soldier's property when the soldier is absent from the unit on ordinary or emergency leave or when hospitalized. If the commander or his designated representative discovers items that would aid in a criminal prosecution, these may be seized and used as evidence. A commander or his designated representative also may conduct an inventory of the property of an individual who has been placed in military or civilian confinement.

When an individual is apprehended for driving while intoxicated or is a subject under apprehension which involves transportation to the PM office, the vehicle of the individual will

be secured. When there is space at the place of apprehension, the vehicle may be secured there; however, if there is no place to secure the vehicle, it will be impounded at the PM office and inventoried.

When a person is apprehended for DWI as he pulls into his quarters parking lot, there is no reason to impound the vehicle. However, if a person is apprehended on one of the outer roads of the post and there is no place to secure the vehicle and there is a possibility that items may be stolen, the vehicle should be impounded at the PM office and inventoried. (AR 700-84 and DA Pam 600-8 contain more information on conducting inventories of personal clothing and property.)

CONDUCTING INSPECTIONS

The commander has the inherent right to inspect the individual barracks in which individual soldiers are housed to ensure the command is properly equipped, functioning properly, and maintaining standards of readiness, sanitation, and cleanliness, and to ensure that personnel are present, fit, and ready for duty.

Such an inspection may include an examination to locate and confiscate unlawful weapons and other contraband if the primary purpose is to determine if the unit is functioning properly, is maintaining standards of readiness, and is fit for duty. This inspection may also include an order for the individual to collect a urine specimen.

A commander conducting an inspection for these reasons may find items he believes may aid in a criminal prosecution. These items may be seized. The inspector may only look in those areas that will enable him to achieve the purpose

and scope of this inspection. When inspecting for food or flammable products, such as lighter fluid, he may look in cigar boxes or other suitable containers.

Normally a commander will conduct periodic security checks to ensure that wall lockers and footlockers are locked. If the commander or his representative conducts a security inspection and notices a wall locker or footlocker unlocked, he may take the valuables from the locker secure them in the unit supply room until the individual returns to the unit. If, while removing the valuables, the person conducting the inspection sees items that would aid in a criminal prosecution, these may also be seized.

The commander has the right to conduct a search for weapons after a unit has been firing on the range and has returned to the unit area

and found a weapon missing. Under these circumstances the commander or his designated representative may conduct a search of all persons who were on the range and others who were in a position to steal the weapon, to include their living area and private automobiles. Under no circumstances may an inspection or inventory be used as a subterfuge for a search (United States v. Roberts, 2 Military Justice Reporter 31 [Court of Military Appeals, 1976]). If the commander is looking for evidence of a specific crime, or suspects that an individual or

group of individuals have drugs in their possession but does not have probable cause for such a belief, he may not use the inspection of the unit as a subterfuge for a search of the individual or group of individuals. Subterfuge normally takes place when a commander or MP "feels" an individual has contraband in his possession or living area but not enough information to amount to probable cause and uses an inspection of the type previously mentioned in this section to search for the contraband.

CONDUCTING RAIDS

A lawful raid is a surprise, legal invasion of a building or area. A raid may be made to apprehend offenders, to obtain evidence of illegal activity, or to recover personal or US government property. Occasionally this raid is made to prevent the commission of a crime or to confiscate contraband.

A raid must be justified. It must have a clearly stated purpose. The authority to conduct a raid stems from and is justified by having probable cause. Probable cause for a lawful raid comes from information obtained through surveillances, registered/confidential sources, criminal intelligence, or other sources.

Raids are conducted by the agency that has jurisdiction of the case. This agency will have mission responsibility and may be augmented by other agencies based on the reputations of those being raided.

Military authorities authorize and conduct raids in areas under military control. Civil police conduct all raids in areas not under military control. Military authorities can request that civil police conduct a raid if enough justification exists. And MP or USACIDC special agents may accompany civil police as observers. Although forbidden by the Posse Comitatus Act to participate in a raid, MP or USACIDC special agents may help identify persons or property seized. If military personnel are apprehended in a civil police raid, they may be released to observing MP or USACIDC special agents without formal receipt.

A raid must be coordinated with units and agencies that will be affected by the raid or that can add to the raid's success. Coordination with the SJA helps ensure that the results of a raid can be used in court. In the interest of security, however, coordination is limited to that which is essential. The time of the raid should be selected, if possible, to ensure minimum interference from heavy traffic and allow rapid movement to ensure the presence of subjects and illegal items.

PLANNING A RAID

To be successful raids must be planned. Plans must include not only team composition, equipment, and operational concept, but also any special arrangements that must be made. And alternate plans should be developed. The raiding party can switch to the alternate plan on prearranged signals if the original plan goes awry.

A raid plan should be concise, simple, flexible, and should generally follow the steps used for planning an operations order. It must be based on sound tactical concepts and should be adaptable to any contingency.

A raid is planned in detail with each member of the raiding party briefed on the—

- Objective of the action.
- Number of offenders and their names, descriptions, injuries, and so forth.
- Act the offender is suspected of committing.
- Reputation, background, characteristics, and mental state of the offender.
- Hostages or other bystanders involved and their descriptions.
- Location of the offender (apartment, floor, room number, window, and so forth).
- Offender and if he is armed, and, if so, the type of weapon and amount of ammunition if known.
- Physical layout of the operation (sewers, skylights, adjacent buildings, type construction; for example, wood, brick, and so forth).
- Support forces.

The effectiveness of a raid depends largely upon specific planning and preparation including use of criminal intelligence. Essential to the effectiveness of any raid is the speed and surprise with which it is executed. Although some raids must be staged with a minimum of planning and preparation, the factors of proper coordination, manpower, and equipment to include special weapons must not be overlooked. Essential factors in planning a raid are--

- Mission.
- Opposition expected.
- Items to be searched for or seized.
- Composition of raiding party.
- Orientation of personnel.
- Position and role of each member.

Planning time can be reduced by following an SOP. The SOP contains checklists to help planners. And it gives guidelines for recurring raid factors common to all successful raids. These factors are surprise, speed, simplicity, superiority, and safety.

FACTORS OF A SUCCESSFUL RAID				
SURPRISE of time and place	SPEED of action	SIMPLICITY of plan	SUPERIORITY of numbers, weapons, and maneuverability	SAFETY awareness
Essential for success	Essential for surprise	Ensures plan can be understood by participants	Reduces resistance	Reduces danger to raiders
Catches subjects unaware	Ensures raiders can apprehend subjects before they can take counteraction	Ensures instructions can be carried out	Increases likelihood of raid's success	Protects public
Raiding party can move in when least expected				

Surprise keeps subjects from organizing resistance to the raiding party and from destroying or concealing evidence. It keeps them from escaping or helping other subjects escape. And it lessens their chances for suicide attempts if they are so inclined. The subjects of the raid must not know they are targets until the operation begins. The fewer people who know a raid is planned, the greater the likelihood of surprise. Once the raid begins, it must be carried out with speed and precision. The time of the raid must be planned to fit the circumstances. The best time to carry out a raid is when few uninvolved people are about. Raids are often conducted at daybreak. The element of surprise is usually on the side of the raiding party at that time of day.

Speed of execution is vital to the success of a raid. And speed can only be obtained if, from the planning stage onward, all participants have and know their specific assignments. Thus, simplicity of the plan is a key factor for a well-organized raid. Raiding party instructions must be clearly stated. And they must be easy to carry out.

Superiority in manpower and equipment can make the difference between a raid's success or failure. Superiority comes from knowing and exceeding the subject's capabilities. The need for superior manpower or maneuverability dictates the number of members used in the raiding party. And superiority of firepower is desirable in any raid situation. If criminals know the raiding party is better armed than they are, they are less likely to resist. If criminals are armed as well or better than the raiding party, they may believe they have a chance for escape and thus offer greater resistance.

Safety must have a high priority in any MP operation. Danger is inherent in any raid situation. The raiding party must be thorough, cautious, and safety conscious. Speed must not be gained at the expense of safety. Using trained and experienced

personnel reduces the hazard of injury to or death of innocent persons. Every raid member must be able to recognize all members of the raid party. In multiorganizational raids, distinctive clothing, like raid jackets, can clearly identify raiding party members. Each member of the multiorganizational raiding party must be familiar with all aspects of the operation, as well as his or her own mission.

DETERMINING RAIDING PARTY COMPOSITION

The raiding party's composition is determined by the situation and the resources available. There is no set number of people or teams who should make up a party. A suggested organization, which can be modified as needed, is composed of a raid commander; entry, security, prisoner, reserve, and medical teams; and their respective commanders. Sometimes specially detailed persons or teams augment the raiding party. For example, a chemist or a special dog handler team may accompany the basic party.

The raid commander has the overall responsibility for planning and conducting a raid. Raid commanders are selected for their experience and leadership ability and for their knowledge of the situation. Team commanders are responsible to the raid commander for the supervision of their respective teams. They, too, are selected for experience and leadership ability. A reserve team commander is usually named as the assistant raid commander. He assumes command of the raiding party if the commander is injured. A chain of command is established for the raiding party and within each team.

The entry team is the maneuver element. It enters the target area to make apprehensions, as needed, and/or recover property. The entry team may have a recorder, a photographer, and an evidence custodian. The recorder makes notes of events, and property recovered during the raid.

The photographer complements the recorder's notes with photographs of items or events. The evidence custodian assembles, tags, and receipts for the evidence or properties seized.

The security team provides cover for the entry team. It also seals off possible avenues of approach and escape.

The reserve team reinforces or assists wherever needed. Part of this team may stay mobile for use as a pursuit unit. If the reserve team is not needed for its basic purpose, it can augment processing and help control the raid site.

The prisoner team enters the building or area after it is secured. It takes charge of prisoners apprehended by the entry team. The prisoner team must be aware that the entry team does not make a complete search of the prisoners at the time of apprehension.

The medical team should include a doctor if possible. The medical team normally remains with the reserve team. The medical team treats injuries incurred by members of the raiding party or subjects of the raid.

DETERMINING EQUIPMENT REQUIREMENTS

Equipment is selected to suit the raid's purpose and the expected degree of opposition. Special equipment like public address systems, night-vision devices, and drug detector dogs are carefully chosen. Too much equipment can slow the raiding party. Too little equipment can hamper the raid's effectiveness.

The raid commander selects the weapons to be used. He considers the subject's armament, the terrain of the neighborhood, and the degree of resistance expected. He ensures that MP armed with special weapons are proficient in their use.

If riot control munitions are used, they must be planned for. (See FM 19-15 for specific procedures for use of riot control agents.)
Clearance to use riot control

munitions must be obtained from the installation commander. The raiding party must have protective masks. And wind direction, traffic, and population density must be considered. Type of munitions must be considered. For example, using burning-type munitions in wood structures can cause fires.

Effective communications are a must for a successful raid. Natural voice, visual, and radio communications give the raid commander control over his various elements. At a minimum, the raid commander and each team leader need a radio. Members of the security team occupying likely avenues of escape also need radios. (Radio equipment must be checked before use. Use of relays may be necessary.)

Hand and arm or whistle signals are often used to direct movements, such as when to begin the raid. Visual and sound signals should be backed by radio communications. The reverse is also true. The local telephone system can be used as well. The important point is to have an alternate means of communication. One method is not enough.

PERFORMING RECONNAISSANCE

If time permits, the raid commander performs a reconnaissance of the building or area to be raided. He may have photographs, maps, blueprints, or sketches collected to supplement visual observations. And he may consider covert operations to gain entrance to help develop his raid plan.

When performing a recon, the MP look for the best route of entry to the target. They check for vantage points and patterns of occupants of the area. And they note points offering observation and fields of fire for the raiding party and/or the occupants.

When reconnoitering a specific building, MP may enter only if doing so will not compromise the raid. MP can obtain blueprints from the facility engineer to gain a thorough knowledge of floor plans and

interior arrangements of a building. MP can note the doors and windows, their construction, and the direction in which they open. They can note likely exits and entrances to include emergency doors and fire escapes. They seek interviews with reliable persons who are responsible for or who have previously entered the area. And they identify persons who may or will be in the building. They spot the location of activities in the area; for example, MP may note the placement of dice and card tables used for gambling. They also assess likely problem areas.

EXECUTING A RAID

No two raids are alike. But many raids are based on similar types of information and follow similar sequences of actions.

Night raids are more hazardous than daylight raids. In many civil jurisdictions a night raid must be justified to a magistrate. The magistrate must be convinced that the purpose of the raid could not be achieved during the daytime, perhaps because the subject would not be at home. This legal restriction is not written into military law. But the principle applies. The law supports the point that a raid should be announced and the raiding party should clearly identify themselves as MP before the party enters.

Student Handout 4

This student handout contains an extract from FM 27-1.

STUDENT HANDOUT 4

CHAPTER 3 The Preliminary Investigation

REPORT OF OFFENSE

Anyone may report an offense by a soldier to the local civilian police, the military police, or the unit commander. If the soldier commits an offense off post, the civilian police will usually investigate. Military police normally investigate on-post offenses. If an offense is minor, such as a soldier disobeying an order or being late for unit formation, a unit NCO or officer will report it to the unit commander. As the company commander, you must conduct a preliminary investigation and make the initial decision about how the case should be handled, no matter how the command reviews the information. You must ensure that all reported offenses are quickly and thoroughly investigated. You may conduct the preliminary inquiry yourself or direct someone else to do so. (See MCM, R.C.M. 303.) In serious or complex criminal cases, you should seek the help of law enforcement personnel. When collecting information that may prove or disprove allegations of misconduct, investigators should ask three primary questions:

- Was an offense committed?
- Was the suspect involved in the offense?
- What is the character and military record of the suspect?

Investigators must always remain impartial. A one-sided investigation may result in an injustice to the accused and an embarrassment to the command.

Preliminary investigations are usually informal, consisting of interviews with witnesses and reviews of police reports. Investigations must provide a thorough, factual foundation for determining what happened and what should be done. Preliminary investigations should not be confused with UCMJ, Article 32 investigations, which require sworn charges. Nor should they be confused with the procedures for administrative investigations addressed in [AR 15-6](#).

Once a preliminary investigation is complete, you must do one of the following:

- Take no action.
- Take nonpunitive disciplinary action.
- Impose nonjudicial punishment under UCMJ, Article 15.
- Prefer court-martial charges against the accused and forward them up the chain of command with a recommendation for appropriate action.

STATEMENTS OF SUSPECTS AND WITNESSES

Investigations may be complicated or simple. Not all cases will require formal statements; in simple cases, you may find sufficient facts without written statements. You must investigate the circumstances of alleged crimes and examine the facts relevant to the case. You should ensure that all witnesses and suspects are interviewed. Interviews should be fair and prompt. Before questioning, you must advise suspects of their rights under UCMJ, Article 31, and of their right to counsel.

A confession or admission by a suspect without a proper rights warning will not be admissible in a court-martial. A court, however, may still convict an accused because of other evidence of guilt that is admissible. **Failure to warn does not mean automatic acquittal; it means that the admission may not be presented to a court-martial.** (See MCM, 305, Military Rule of Evidence.)

After receiving the warning, a suspect may waive the right to remain silent and the right to consult a lawyer. He must waive these rights freely, knowingly, and intelligently. If a suspect indicates that he wishes to consult a lawyer, he should not be questioned until a lawyer is made available. The installation Trial Defense Service office will provide a military lawyer. If the

suspect indicates that he does not wish to answer questions, no questions should be asked. If he waives his rights, he may then be questioned about the offense.

In any case, your manner should not lead suspects to believe they are being threatened. Neither should it play down the importance of the warning. If you do either of these, a court-martial may determine that the suspect's agreement to answer questions was in response to coercion or improper inducement. The judge would then find the statement not admissible in the trial. You may decide not to question a suspect if other adequate evidence is available.

Rights Warning Statement

You need not give a rights warning to witnesses who are not suspects. During the questioning, you may, however, begin to suspect that a witness was involved in an offense. The witness may appear to have been an accomplice or an accessory to the crime. You should then stop the questioning, inform the witness of the offense of which you now suspect him, and warn him of his rights as previously described. [DA Form 3881](#) provides a convenient format to apprise individuals of their rights, and you should complete it before questioning a suspect.

Written Statement

A sworn statement is the best way to record accurately and completely information obtained in an investigation. UCMJ, Article 136, authorizes investigating officers to administer oaths in conjunction with sworn statements taken in the course of a preliminary investigation.

No special form is required; however, the investigating officer may use [DA Form 2823](#) for a witness's statement. He should use the language of the witness or suspect throughout the statement, even if the language is vulgar. Doing so ensures that the statement is the witness's and not the composition of the investigating officer. The statement may be narrative, questions and answers, or both.

The following is an appropriate oath for administering and completing the sworn statement:

**Do you swear that the statements
you have made are the truth, the
whole truth, and nothing but the
truth?**

The witness should sign his name, and the officer administering the oath must then sign his own name.

You should request sworn statements primarily from persons who have direct, personal knowledge of the facts. For example, if Sergeant A provided the information to the witness, you should try to get a sworn statement from Sergeant A. Opinions and conclusions without supporting facts, however, reduce the reliability of sworn statements. You should try to get the facts on which opinions are based and encourage witnesses to provide facts rather than opinions. In each case, the witness should sign the written statement and initial it at the beginning and at the end of each page, at each erasure and correction, and at the places otherwise indicated on DA Form 2823. The initials are to avoid any question of tampering.

Oral Statement

When a suspect waives his rights under Article 31 and his right to counsel but refuses to make a written statement, you should record his remarks. Oral statements may be admissible in a trial by court-martial. A suspect may make a statement about his part in an offense to a person not investigating the case, or he may blurt it out to you before he receives the rights warning. The information he provides may be admissible in a trial by court-martial as well.

LAWFUL SEARCHES AND SEIZURES

You may lawfully seize soldiers' property in their units after a legal search, inspection, or inventory. An unlawful search may violate a soldier's rights and result in seized items being inadmissible in a court-martial.

Searches

PROBABLE CAUSE TO SEARCH

You may direct a search of any person or property in a place under your control only if you have probable cause. You may authorize searches in your company areas, but only post commanders may authorize searches or apprehensions in government quarters. (See MCM, 302, Military Rule of Evidence and MCM, R.C.M. 315.) Probable cause to search requires both of the following:

- You have a reasonable belief that evidence of the crime is on the person or at the place you plan to search.
- The information and its source are reliable.

probable cause lies between suspicion and knowledge. You must conclude on the basis of information presented to you that the contraband or evidence of a crime is at that time likely to be in the possession of the suspect or on the premises to be searched. Your determination that probable cause exists must be reasonable and based on facts. It may not be based solely on others' conclusions. A CID agent's, first sergeant's, or informant's awareness of sufficient facts to provide probable cause is unimportant unless the commander who orders or authorizes the search receives those facts. That commander must believe the person furnishing the information and the information are reliable before probable cause can exist.

The following [examples](#) are situations in which you would have probable cause to search.

Example 1

A reliable person informs you that he saw the suspect earlier that night with hashish. You trust the informant because of his past association with you. You also know the information is accurate because the informant saw the incident himself. You authorize a search of the suspect's person.

This search is lawful. You knew both the informant and his information to be reliable.

Example 2

A person whose reliability is unknown to you informs you that the suspect is a drug pusher. The informant tells you that the accused has told him that he is going to Metropolis to make a "buy," he will return by train at 1900 or thereabouts, he will be carrying a brown suitcase, and he will go to room 213 in the barracks to make his sale. You advise the CID of these facts, and they in turn place the depot under surveillance. At 1900, the suspect steps off a train arriving from Metropolis. He is carrying a brown suitcase. He immediately takes a taxi to the barracks and goes directly to room 213. The CID advises you of these facts, and you authorize a search, which produces a large quantity of drugs.

The search is lawful. Although you had no prior knowledge of the informant's reliability, so much of the information he supplied proved to be correct, you had good reason to believe that the rest of the information was also reliable.

Military judges and magistrates may also issue warrants to search suspects and property subject to military control, also upon a showing of probable cause. (See MCM, Mil. R. Evid. 315.) When time permits, information supporting an authorization should be provided under oath or affirmation and in writing.

Since the law concerning probable cause is often difficult to apply, you should consult a judge advocate before authorizing a search. Doing so will not only help you avoid unlawful searches and protect soldiers' rights, but will also ensure that physical evidence will be admissible in a court-martial. Appendix A shows a completed affidavit requesting authorization to search. Appendix B shows a written search authorization. The military, however, has no requirement that either the request or the authorization be in writing.

NO PROBABLE CAUSE TO SEARCH

The following [paragraphs](#) address searches that do not require probable cause to be lawful.

Searches incident to lawful apprehension. A soldier may be searched when and where he is legally apprehended. (See [Apprehensions](#)) Such a search is to discover weapons and prevent destruction of evidence. The search is limited to the soldier's person and the area within his immediate control. For example, the area within his immediate control might include an open wall locker within reach, but it might not include the entire room. However, a complete search of the passenger compartment of an automobile is permissible, even if the apprehended soldier has been removed from the vehicle and cannot return to it.

Searches of government property. A search of government property does not require probable cause unless the person to whom the property is assigned or issued has a reasonable expectation of privacy. Generally, a person does not have a reasonable expectation of privacy in regard to government property that is not issued for personal use. (See MCM, Mil. R. Evid. 314(d).)

Searches by consent. Probable cause is not necessary when a person freely consents to the search. Because consent is a waiver of the Constitutional right of freedom from unreasonable searches, the government must be able to produce clear and convincing evidence that the consent was voluntary and not a submission to authority. You should have a witness to a soldier's consent to a search. If the consent becomes an issue at a trial, the witness can verify its nature. If the search then uncovers evidence of criminal conduct, the evidence will be admissible at a trial. (See MCM, Mil. R. Evid. 314(e).)

To establish voluntary consent, the suspect should be informed of both of the following:

- The legal right to withhold consent.
- The fact that any evidence found during the search can be used against the suspect.

The following [examples](#) are situations lacking probable cause to search.

Example 1

A CID agent calls you and states that he has apprehended one of your soldiers at the railroad station with marijuana on his person. The agent requests authority to search the suspect's living area. Based solely on this information, you authorize a search of the suspect's wall locker, where the agent finds more marijuana.

The search is unlawful. You had no evidence from which to reasonably conclude that the suspect had marijuana in his wall locker, which is located some distance from his place of apprehension. You must have more than mere suspicion.

Example 2

A reliable person informs you that three weeks ago he saw marijuana in the suspect's footlocker. Based solely on this information, you authorize a search of the suspect's footlocker.

This search is also unlawful. Since the reported possession was far removed in time, you had no valid reason to believe that the suspect still had any marijuana. Your being told that the suspect was seen with marijuana in his footlocker that same day would constitute probable cause and be a basis for a lawful search.

Example 3

A larceny occurs in the barracks, and \$500 and a dress are reported missing. Three days later, Private Smith, the victim's roommate, buys a stereo from the post exchange for \$350. The victim, suspicious of her roommate, informs you. Based solely upon this information, you authorize a search and discover \$200 and the dress in Private Smith's wall locker.

The search is unlawful. Suspicion alone does not constitute probable cause. You should have continued the investigation until more information was uncovered, such as a report that another soldier had seen the victim's dress in the suspect's wall locker.

Seizures

Evidence in open view or in a public area such as a dayroom or an open field may be lawfully seized without probable cause and without consent. (See MCM, Mil. R. Evid. 314(j).)

The Fourth Amendment prohibits unreasonable seizure of the person. An unreasonable seizure may result in the evidence being inadmissible in a court-martial.

CONTACTS AND STOPS

Every contact between an official and soldier is not a detention and therefore subject to the Fourth Amendment. Many contacts do not result from suspicion of criminal activity. Examples of lawful contacts include questioning witnesses to crimes and warning pedestrians that they are entering a dangerous neighborhood. These types of contacts are entirely reasonable, permissible, and within the normal activities of law enforcement personnel and commanders--they are not detentions in any sense.

Officers, NCOs, and MPs may initiate contact with persons in any place they are lawfully situated. It is difficult to define when a person is lawfully situated. Generally, this includes inspecting the barracks, making a walk-through of the barracks or unit area, and presence in any place for a legitimate military purpose.

An officer, NCO, or MP who reasonably suspects that a person has committed, is committing, or is about to commit a crime has the obligation to stop that person. He may stop both pedestrians and vehicle occupants. If the person stopped is a suspect to be questioned, the official should read him or her Article 31 and the counsel warnings. The stop must be based on more than a hunch. The official making the stop should be able to state specific facts to support the decision to stop an individual.

APPREHENSIONS

Any officer, warrant officer, noncommissioned officer, or military policeman may apprehend individuals with probable cause. Probable cause

to apprehend requires the following:

- A reasonable belief that a crime is being committed or has been committed.
- A reasonable belief that the person being apprehended is guilty of a crime.

An example of probable cause to apprehend is when you or another reliable person have seen someone violate UCMJ, such as using marijuana, assaulting someone, breaking another's property, or being drunk and disorderly. Probable cause requires a common sense appraisal of all available facts and circumstances.

You may apprehend a soldier anywhere and any time; the only limitation is that you must have probable cause. To do so, you should identify yourself as an officer and show your ID card if you're not in uniform. Tell the soldier you are apprehending him and explain the reason, such as disorderly conduct, assault, or possession of marijuana. You may use help. Read the soldier his Article 31 rights, preferably from a rights warning card, as soon as practicable. If the soldier resists apprehension by running away or assaulting you, enlist others to help catch him; he may be prosecuted for resisting apprehension or disobeying an order. You may detain civilians until military or civilian police arrive.

Generally, with probable cause, no arrest warrant is required in the military. There is one important exception, however: **a warrant is required for any apprehension in a private dwelling, such as on-post family quarters, the BOQ or BEQ, or off-post quarters.** The barracks and field encampments are not considered private dwellings; therefore, no special authorization is needed to apprehend someone there.

If the person to be apprehended is in a private dwelling, the apprehending officer must get authorization from a military magistrate or the commander with authority over the private dwelling (usually the installation commander). Also, to apprehend a person at off-post quarters requires coordination with civilian authorities.

INSPECTIONS

Search and seizure requirements do not limit your authority to conduct inspections. The primary purpose of inspections is to ensure the unit's security, military fitness, and order and discipline. Orders for urinalyses are a permissible part of a valid inspection. An inspection can include an examination to locate and confiscate unlawful weapons or contraband as long as the inspection is not a pretext for a search; that is, the primary purpose of an inspection cannot be to obtain evidence for use in a trial or other disciplinary proceeding.

An inspection for weapons or contraband may not be proper if any of the following occurs--

- The inspection immediately follows a report of a specific offense in the unit and was not scheduled before the report.
- Specific individuals are selected for inspection.
- Persons inspected are subjected to substantially different intrusions.

Such an inspection is proper only if the government presents clear and convincing evidence that the primary purpose was to ensure security, military fitness, or order and discipline and not to secure evidence for a trial or disciplinary proceeding. Evidence disclosed during a legitimate inspection may be seized and admitted at a court-martial. (See MCM, Mil. R. Evid. 313.)

INVENTORIES

When a soldier is absent without leave, is about to be confined, or is being detained by civilian authorities, an inventory of that soldier's personal belongings is required. As with an inspection, an inventory may not be a pretext for search. Evidence obtained as a result of a lawful inventory is admissible in a court-martial. (See MCM, Mil. R. Evid. 313.)

COOPERATION WITH POLICE INVESTIGATORS

You should coordinate with military police and CID investigators for several important reasons. The offense may be more serious than you realize. If it is complicated, sophisticated investigative techniques may be necessary.

They may include lineups, fingerprinting, expert interrogation, or laboratory analyses. Also, the offense may be one of a series of crimes currently under investigation.

[ARs 190-30](#) and [195-2](#) require you to report criminal activity, known or suspected, to the military police for appropriate investigation. This requirement applies to persons subject to the UCMJ, Department of Defense civilian employees in connection with their assigned duties, government property under Army jurisdiction, or incidents occurring in areas under Army jurisdiction.

PRESERVATION OF PHYSICAL EVIDENCE

You must preserve and safeguard in your custody any physical evidence of an offense. As few people as possible should handle it; everyone who touches it may have to appear at the trial. Physical evidence must be carefully marked, to ensure later identification, and recorded on a chain-of-custody document. (See [AR 195-5](#).) The chain-of-custody document, such as [DA Form 4137](#), is a record of everyone who has handled an item from when it was originally identified as evidence until the trial. Physical evidence should then be turned over to professional investigators as soon as possible.

Perishable and unstable evidence requires special attention for preservation. Sometimes professional assistance is necessary, for example, to preserve a fingerprint or a tire track. The military police can usually assist.

The first person to assume custody of the physical evidence marks it immediately. This person may mark the item itself, usually with his initials, the date, and the time. If the evidence cannot be marked, he should place it in a sealed, marked container. The container must be tamper-proof or sealed to show an absence of tampering. When physical evidence is introduced at trial, counsel must show that it is the same item found at the scene of the crime or otherwise connected with the offense and is unaltered.

PRETRIAL CONFINEMENT

While charges are being processed, you may need to confine or restrict the suspect. Pretrial confinement is limited to persons reasonably suspected of a serious offense and in which it is necessary to ensure their presence at trial or to prevent them from committing other offenses. In determining whether confinement is appropriate, you should remember that it deprives the accused of liberty while he is presumed innocent and makes his defense preparations difficult. Your convenience is not enough to justify curtailing a soldier's freedom, and you may not use it as punishment. Also, an accused will receive day-for-day credit for his confinement against the adjudged sentence.

Grounds for pretrial confinement are the accused's foreseeable, serious criminal misconduct or risk of his absence before trial.

Serious criminal misconduct includes-

- Intimidation of witnesses.
- Obstruction of justice.
- Serious injury to others.
- Serious threats to the safety of the community.

When a soldier is placed in pretrial confinement, he must be informed of-

- The nature of the offenses for which he is confined.
- His right to remain silent and that anything he says may be used against him.
- His right to request counsel and to retain civilian counsel at no expense to the government.
- The procedures for review of pretrial confinement.

Developments in military decisional law and requirements for magisterial review have made pretrial confinement considerations increasingly complex. If you consider confinement necessary, consult with the staff judge advocate, the chief of military justice, or the trial counsel. (See MCM, [AR 27-10](#), and AR 600-31.)

Types of confinement include--

- **Conditions on liberty.** Under this type of restraint, a soldier may be required to avoid certain activities, places, or people. A speedy trial is not gauged against the imposition of conditions on liberty.
- **Restriction.** Under this type of restraint, the accused is directed to remain within starts the 120-day limit required for a speedy trial.
- **Arrest.** This type of restraint is much like restriction, but the soldier ordinarily does not perform his regular duties. Arrest starts the 90-day limit required for a speedy trial.
- **Confinement.** Confinement is a full, physical restraint in a confinement facility. It starts the 90-day limit for a speedy trial.

You must review any pretrial confinement within 72 hours and prepare a memorandum justifying it. This normally occurs prior to placing a soldier in confinement. Within 7 days, a neutral reviewing officer (usually a military judge or judge advocate) will review your confinement justification. The accused may present testimony to the reviewing officer and may also ask the military judge to review the confinement at trial. (See MCM, R.C.M. 305.)
